
(2018) 04 GAU CK 0012
In the Gauhati High Court
Case No : CRL.A(J) 89 of 2014

MANTU MAJHI and ANR

APPELLANT

Vs

THE STATE OF ASSAM

RESPONDENT

Date of Decision : 10-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302

Citation : (2018) 04 GAU CK 0012

Hon'ble Judges : AJIT SINGH C.J, ACHINTYA MALLA BUJOR BARUA

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

Ajit Singh, C.J.

1.The two appellants, namely, Mantu Majhi and Anima Majhi have been convicted under Section 302/34 of the Indian Penal Code and sentenced to imprisonment for life and fine of Rs.3,000/- each, with default stipulation.

2. The victim of the incident was Ruhit Kalandi, aged about 28 years.

3. Facts in short are these. The appellants Mantu and Anima are husband and wife. Their house was contiguous with the house of Ruhit in village

Mailbellia District Jorhat. On 28.5.2012, at about 7 p.m., Mantu went to the house of Ruhit and asked him to come to his house to have some

discussion. Ruhit then accompanied Mantu to the latter's house. After sometime, when Ruhit did not return home, his wife Dipali Kalandi (PW-1)

naturally became anxious. She, therefore, sent Ruhit's sister Pratima Kalandi (PW-2) to the house of Mantu to call him. When Pratima reached

there, she saw Mantu repeatedly giving blows to Ruhit with a dao severely injuring him. Due to such repeated assaults, Ruhit fell on the ground

bleeding profusely whereafter he died on the spot. One finger of Ruhit was also found to be chopped off from his body. On seeing the occurrence,

Pratima raised hue and cry, hearing which, Dipali, Bhim Kalandi (PW-3), Tulshi Kalandi (PW-4), Promila Kalandi (PW-5) and Binod Kalandi (PW-6)

rushed to the place of occurrence. There they saw the dead body of Ruhit lying in the courtyard of Mantu. They also saw Mantu holding a naga dao

in his hand and resisting everyone from entering his house by threatening them with dire consequences. Dipali then lodged ejahar Exhibit 1 at Police

Out Post Deberapara falling within the jurisdiction of Police Station Mariani. Sub Inspector Mayurjit Gogoi (PW-7) responded by immediately rushing

to the house of Mantu. There he found Mantu with a naga dao in his hand, which he seized vide Exhibit-1. He also found the dead body of Ruhit

having multiple grievous injuries in the house of Mantu. Mayurjit Gogoi, thereafter, arrested both Mantu and Anima and referred the dead body of

Ruhit for post mortem examination.

4. Dr.Tapan Das (PW-8) conducted the post mortem examination on the dead body of Ruhit. He found following injuries on the dead body:-

(i) One chop injury 11x2 cm x bone deep present over the left side of face, lying horizontally. The mandible bone was also found cut across lower part.

(ii) One incised injury 5x.3 x scalp deep present over the head in the left temporal area extending backward from a point 3 cm behind the middle part of the left ear.

(iii) One chop injury 8 x 2 cm x muscle deep present over the left shoulder, superior aspect and transversely placed.

(iv) One chop injury 12 x 3 cm x bone deep present on the left arm upper part, the head of the humerus found cut across.

(v) One chop injury 3 x .5 x muscle deep present on the right thumb, proximal phalanx, lateral aspect.

(vi) One chop injury present over the proximal phalanx of the middle finger of left hand, in the middle part with complete separation of the distal part

from the rest of body. The doctor, in his post mortem examination report Exhibit 10, opined that the death was due to injuries caused by sharp cutting

weapon, which were ante mortem in nature.

5. Mrityunjoy Gogoi, after completing the investigation, submitted charge sheet

Exhibit 9 against appellants â?" Mantu and Anima for an offence under Section 302/34 of the Indian Penal Code.

6. During trial, the appellants abjured their guilt. Mantu took the plea of right of private defence of the body. According to him, while he was sitting in his courtyard, Ruhit came there with a dao to kill him. Thereafter, brother Bhim (PW-3) of Ruhit also came to assault him and when both of them assaulted him, he, to save himself, brought a dao from inside and hit Ruhit with it. Anima, on the other hand, totally denied her participation in the incident. According to her, she was inside the house when the incident took place. But the trial court disbelieved the defence of both Mantu and Anima and relying upon the evidence adduced by the prosecution, especially, the evidence of eye witness Pratima, convicted and sentenced both of them as aforesaid.

7. It is argued on behalf of Mantu that the trial court committed an illegality in rejecting his plea of right of private defence of the body. It has also been argued that in the absence of any evidence whatsoever against Anima, the trial court erred in convicting her.

8. As Mantu has not denied causing fatal injuries to Ruhit with a dao in his house, we shall examine whether he did so in exercise of his right of private defence of body. As seen above, Ruhit was found killed in the house of Mantu with multiple chop and incised injuries. Mantu was also seen holding a dao in his hand by witnesses â?" Pratima, Dipali, Bhim, Tulshi, Promila and Binod. Pratima is an eye witness to the incident. She has deposed that she is sister of Ruhit and lived in his house. According to her evidence, on the date of incident, Mantu had come to the house of Ruhit and persuaded him to go with him on the pretext of having some discussion in the formerâ??s house. Ruhit then accompanied Mantu, but when he did not return home, she, on the request of wife Dipali of Ruhit, went to the house of Mantu and as she reached there, she heard Mantu asking Anima to bring a dao, which Anima brought and gave it to him. Pratima has further deposed that Mantu then made a murderous assault on Ruhit with that dao causing multiple grievous injuries. It is the evidence of Pratima that seeing the occurrence, she got nervous and shouted for help. She has also deposed that hearing her cries, Dipali came out from her house and saw Rohit lying on the ground in an injured condition. Dipali has deposed that on

hearing the cries of Pratima, she rushed to the house of Mantu, where she saw Ruhit lying on the ground in an injured condition and Mantu was standing nearby holding a dao. This witness has confirmed in her evidence that Mantu had taken Ruhit to his house and when he did not return, she had asked Pratima to look for him. The evidence of Pratima and Dipali support and corroborate each other on material particulars, such as, Mantu coming to their house and taking Ruhit to his house; Pratima going to the house of Mantu in search of Ruhit on the asking of Dipali; Pratima seeing Mantu assaulting Ruhit repeatedly with a dao causing injuries; Dipali finding Ruhit lying dead in the courtyard of Mantu and Mantu standing near the dead body with a dao in his hand. The evidence of these two witnesses is further corroborated by the evidence of Bhim, Tulsi, Pramila and Binod, who have equivocally deposed that on hearing hue and cry, they had also rushed to the house of Mantu, where they found him standing with a dao near the dead body of Ruhit. Interestingly, no question was put by Mantu to eye witness Pratima whether Ruhit also had a dao with him at the time of incident. Likewise, no suggestion whatsoever was made to Bhim by Mantu in support of his plea of right of private defence. Further, Mantu did not adduce any evidence in support of his defence that he was assaulted by Ruhit and Bhim. Moreover, no dao was seized from Ruhit's dead body nor any bamboo stick was seized from the place of occurrence. The police seized only one dao and that too from the possession of Mantu. Also Mantu did not prove any injury on his person. Thus, there is hardly any evidence to even remotely suggest that Mantu had to make murderous assault on Ruhit by giving multiple blows with a dao in exercise of right of private defence. Therefore, there is no room left for doubting the involvement of Mantu in the occurrence and that he is the perpetrator of the crime.

9. The involvement of Anima in the crime is, however, doubtful to us. Pratima has deposed that she heard Mantu asking Anima to bring a dao whereafter Anima handed over a dao to Mantu. There is no evidence of either exhortation or instigation against Anima for the commission of crime. It is also not the case of prosecution that she had caught-hold of Ruhit, while Mantu dealt fatal blows to him. Thus, even if the testimony of Pratima is believed, it would merely go to prove that Anima brought the dao and handed over the same to Mantu only on his asking. But, it is very natural that

Anima, as wife, would normally abide by her husband's command and she might not even think that Mantu would give lethal blows with that dao

to Ruhit causing his death. There is also a probability that she might have thought that the dao would only be shown to threaten Ruhit and not to cause

injuries. It is, therefore, difficult to hold that Anima shared common intention with Mantu to commit the murder of Ruhit. Had Anima any intention to

commit the murder of Ruhit, she would not have waited for Mantu's instruction to bring dao and instead would have been ready with the dao

before hand. Also the presence of Anima standing near Mantu is of no consequence as the occurrence took place in her house and her presence was

therefore normal and expected. We, accordingly, acquit Anima of the offence under Section 302/34 of the Indian Penal Code.

10. For these reasons, we affirm the conviction and sentence of Mantu for an offence under Section 302 of the Indian Penal Code. The conviction

and sentence of Anima is, however, set aside as she is acquitted of the charge under Section 302/34 of the Indian Penal Code. Anima is reportedly in

jail since more than 6½ years. She, therefore, be released forthwith.

11. The appeal is partly allowed.