

(2021) 10 GAU CK 0038
In the Gauhati High Court
Case No : Criminal Appeal No. 228 Of 2018

Pradip Baskey

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 29-10-2021

Acts Referred:

Indian Penal Code, 1860 — Section 302, 304
Code Of Criminal Procedure, 1973 — Section 161, 313
Evidence Act, 1872 — Section 106

Citation : (2021) 10 GAU CK 0038

Hon'ble Judges : N. Kotiswar Singh, J; Malasri Nandi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. Z. Hussain, learned counsel for the appellant. Also heard Mr. R. Kaushik, learned Additional Public Prosecutor, Assam, appearing for the State.
2. The present appeal has been preferred against the impugned judgment and order dated 07.05.2018 passed by the learned Additional Sessions Judge, Dibrugarh, in Sessions Case No.283/2013, by which the present appellant was convicted for murder of his wife under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs.10,000/-, in default of which he is to undergo simple imprisonment for one month.
3. Upon an FIR filed on 11.01.2013 by one Abhijit Murmu, who is the brother-in-law of the appellant, informing that the appellant after marrying informant's sister Smt. Anima Murmu for about 17 years had been physically assaulting his sister and when he went to his sister's house he came to learn that at about 11 p.m. on 10.01.2013 the appellant had brutally assaulted his elder sister with hands, as a result of which she died. Accordingly, a police case vide Tingkhong PS Case No.13/13 was registered under Section 302 IPC. Upon completion of investigation, the appellant was charge-sheeted for committing murder of Sabita Baskey alias Anima Baskey punishable under Section 302 of the IPC.

4. The learned Trial Court, on the basis of the evidence adduced, convicted the appellant under Section 302 IPC for committing murder of his wife as mentioned above.

5. As we proceed to examine the correctness of the judgment and conviction of the appellant, it would be relevant to refer to the evidences, briefly, which have been brought on record before the learned Trial Court.

6. The prosecution examined as many as 10 witnesses and exhibited a number of documents.

7. The first prosecution witness, namely, Lokeswar Dhadumia (PW1), who was the village Headman at the relevant time, deposed that on the day of the occurrence in the morning at about 5/6 am, the appellant reported him that there was a quarrel between the appellant and his wife, as a result of which the appellant's wife died. Thereafter, PW1 brought the appellant to Tinkhong Police Station. PW1 also stated that in course of the interrogation, the appellant confessed before the police that he had killed her.

PW1 was also a witness to the inquest.

In the cross-examination, PW1, however, stated that the appellant did not inform him that he killed his wife but denied the charge of the defence that PW1 had falsely implicated the appellant due to certain differences relating to allotment of Fair Price shop which the appellant was running and which PW1 had tried to give to some other person.

8. PW2, Shri Bipin Baskey, is the son of the appellant who was about 16 years. PW2 testified that deceased was his mother and he resided in the same house with the appellant (his father) and his mother (deceased). He stated that in the morning he saw his mother lying dead on her bed and his father (appellant) was sleeping at that time. He also stated that on the day of the occurrence, he was present at the house. He also stated that on the day of the occurrence, there was no quarrel between the appellant and his mother and in the morning, when he called his mother, she was found dead. PW2, however, denied having any knowledge about the incident.

9. PW3 is one Dr. Subhajyoti Deka, who conducted the post mortem examination on the dead-body of the deceased Sabita Baskey. On examination, PW3 found the following injuries on the body of the deceased:-

"1. Periorbital contusion over the left eye (black eye);

2. Multiple abrasion of size 5 cm x 5 cm to 1 cm x 1 cm present over the right forehead;

3. Contusion of size 10 cm x 5 cm over the left face;

4. Lacerated injury of size 2 cm x 1 cm muscle deep present over the left chin;

5. Lacerated injury of size 1 cm x 1 cm muscle deep present over the left

mastoid just below the left ear;

6. Abrasion of size 2 cm x 1 cm present over the right chest;
7. Abrasion of size 2 cm x 1 cm present over the right elbow;
8. Contusion of size 3 cm x 2 cm present over the right forearm in the upper part and dorsal aspect;
9. Contusion of size 5 cm x 2 cm present over the dorsal aspect of the lower part of left arm;
10. Abrasion of size 2 cm x 1 cm present over the left wrist;
11. Multiple abrasion and contusion of varying sizes present over the right hip;
12. Abrasion of size 2 cm x 1 cm present over the right leg dorsal aspect of the lower one third;
13. Multiple abrasion of varying sizes present over the middle and left leg."

PW3 also found the following injuries:-

"On examination of cranium and spinal canal: Scalp hematoma of size 6 cm x 3 cm present over the left temporal region. Scalp and vertebrae are healthy. Brain and membrane are congested. Subdural haemorrhage present over both side of the cerebral hemisphere.

On examination of thorax: right ribs fractured, 2nd, 3rd, 4th and 5th at mid clavicular line. Left side rib fractured, 1, 2, 3, 4 and 6 in the clavicular line. Pleurae, larynx, trachea, both the lungs are pale. Heart pale and empty.

On examination of abdomen: peritoneum is pale, cavity filled with 1 litre of blood, mouth pharynx oesophagus are pale, the stomach and mucosa are pale contains 200 grams of partly digested food. Liver lacerated of size 4 cm x 5 cm present over the anterior surface of the right lob. Spleen, kidney and bladder all pale."

PW3, accordingly, gave his opinion that death was due to coma resulting from head injuries sustained and all injuries were ante mortem and caused by blunt force impact and homicidal in nature. PW3 proved the post mortem report, which was exhibited as Ext.2.

10. PW4, Sri Abhijit Murmu, is the complainant and brother-in-law of the appellant. He proved the contents of the FIR, which was exhibited as Ext.2. PW4 testified that on the next morning of the day of the occurrence, the second wife of the appellant informed him over telephone that the appellant had killed his wife as there was a quarrel between them on the previous night. Then, PW4 along with Rupasi Tudu and Suresh Murmu, came to the house of the appellant and saw that police were already there. He also saw the dead-body and found injury mark on the forehead of the deceased.

PW4 also testified that the marriage between the appellant and his sister was solemnised around 16/17 years back, and prior to three years from the date of the incident, the appellant married for the second time and quarrel started taking place after the second marriage. PW4 also stated that the appellant had assaulted his sister on two occasions and his sister came to his house. PW4 also stated that he had taken his sister for medical treatment as she sustained injury because of the assault by the appellant.

Subsequently, on two occasions, the appellant brought his sister back to his house.

PW4 also stated that he lodged the Ejahar as after the second marriage, there was quarrel and altercations and the appellant had assaulted the deceased on earlier occasions also.

During cross-examination, PW4 admitted that he did not know how the occurrence took place as he was not an eye-witness to the incident.

11. PW5, Mohan Kiskoo, was not an eye witness but he saw the dead-body lying on the bed. PW5 was present when the inquest was held.

12. PW6 is one Atul Karmakar, who was not an eye witness but knew the informant, deceased and appellant. He merely testified about visit of the police in the house of the appellant and also taking out of the dead-body by the police.

13. PW7, Smti. Prano Baskey, deposed that the appellant is her brother-in-law. PW7, however, turned hostile.

14. PW8, Sita Murmu, was a co-villager who knew both the deceased as well as the appellant. PW8 was also declared hostile as she claimed ignorance of how the deceased had died. PW8 denied what she had stated to the police under Section 161 Cr.PC about her visiting the house of the deceased and also about the assault by the appellant and of also seeing the grievous injuries on the dead-body of the deceased.

15. PW9 is one Bhuban Dhadumia, who merely stated about visiting the house of the deceased. He found the dead-body of the deceased lying on the bed.

16. PW10 is the Investigating Officer, who testified that on receiving the complaint, the First Information Report was registered and he visited the place of occurrence at around 12.20 noon and found the dead-body of the wife of the deceased lying on the bed. He found marks of violence on the face of the deceased and bleeding from the injuries. Thereafter, inquest was held and while holding the inquest, several injuries were noted on the dead-body of the deceased. PW10 sent the dead-body to the AMCH for

post-mortem examination. PW10 stated that the appellant came to the Police Station in the morning and reported that his wife had died due to drowning in a pond.

PW10 also stated that during interrogation, the appellant confessed his guilt and he was sent to the Court for recording his confessional statement. In the Court, however, the appellant denied to confess.

During cross-examination, PW10 admitted that in the inquest report, he had not mentioned the nature of the weapon by which the injuries were probably caused and he had not mentioned the cause of death of the deceased in the inquest report. He also admitted that he made no seizure in connection with the case.

PW10 denied that the accused did not confess before him in the Police Station and he did not record the statement of PW7 and PW8.

17. On conclusion of recording of evidences on behalf of the prosecution, the appellant was examined under Section 313 Cr.PC. However, he denied all the allegations and the incriminating evidences, which came out in course of the trial. He also did not adduce any evidence in his defence.

18. We will now proceed to examine the impugned judgment.

19. The learned Trial Court noted that death of Sabita @ Anima @ Phulmoni Baskey was neither denied nor disputed and in coming to the conclusion that the death was homicidal, the learned Trial Court referred to the evidence of the doctor (PW3), who conducted the autopsy over the dead-body.

As mentioned above, the evidence of the doctor reveals that there were 13 injuries over the dead-body and he also found injuries on the temporal region of the deceased. There was also evidence of some of the ribs of the deceased being fractured. Accordingly, the doctor gave the opinion that injuries were ante mortem and caused by blunt object and the death was homicidal in nature.

The learned Trial Court noted that the doctor (PW3) was not cross-examined by the defence and, as such, his evidence remained unchallenged. Thus, the learned Trial Court was of the view that the evidence of the doctor cannot be discarded or disbelieved.

20. Having come to the conclusion that the death of the deceased was homicidal in nature, the learned Trial Court proceeded to examine the circumstances in which the death occurred.

As can be seen from the evidence, the learned Trial Court also noted that there was no eye witness and accordingly, the question as to the perpetrator of the crime had to be answered on the basis of the circumstantial evidence. In this regard, the learned Trial Court referred to the evidence of PW1, Lokeswar Dhadumia, who took the appellant to the Police Station. PW1 had stated that on the day of the occurrence at about 5/6 am, the appellant had informed him about the quarrel between him and his wife and the appellant had also confessed to his guilt. However, during cross-examination, PW1 stated that the appellant did not inform him that the appellant had killed his wife.

21. The learned Trial Court further examined the evidence of the son of the

appellant (PW2) who, in categorical terms, mentioned that the dead-body of the deceased was found on the bed in the house and at the relevant time, his father was sleeping.

22. The learned Trial Court inferred that considering the injuries sustained by the deceased on her body, if it was an assault by someone other than by any inmate in the house, the said act of assault would have woken up the appellant and others and they would have intervened. However, neither the appellant nor his son pointed out their fingers towards anyone for the alleged offence.

23. The learned Trial Court also noted that the appellant had two wives and the informant was informed by his second wife about the incident. Though the second wife was not examined by the prosecution, the appellant had not stated anything in his statement recorded under Section 313 Cr.PC that it was someone else who had committed the crime which had happened inside the house. The learned Trial Court also noted the evidence of the doctor that partly digested food was found in the stomach of the deceased which indicated that the incident took place after the food was taken by the deceased, which could happen only in the night time and the learned Trial Court also noted that the appellant did not state anywhere that at the time of the occurrence in the night, the deceased was away from home.

The learned Trial Court also noted the evidence of the brother-in-law of the appellant who stated that on earlier occasion also, the appellant had assaulted his sister.

24. The learned Trial Court also noted that the son and other relatives of the appellant had turned hostile and, in spite of that, there were evidences which support the case of the prosecution that the death had occurred in the house of the appellant and, as such, held that merely because some of the witnesses had turned hostile, it would not render the evidence of the other witnesses unreliable and cannot be discarded wholly.

25. The learned Trial Court on considering the evidences observed that if anyone else had committed the crime, the appellant would have raised alarm and informed others about the same but it did not happen. Rather, the dead-body was found with multiple wounds. The learned Trial Court also noted the strained relationship between the appellant and the deceased after the appellant contracted a second marriage and came to the conclusion that the appellant was responsible for the death of the deceased and, accordingly, convicted the appellant.

26. We have noted from the evidence available that it is not in dispute that the death occurred in the house of the appellant in the night time when the deceased and other members were sleeping. There is evidence on record that at the time of occurrence, the appellant was in the same house and the deceased was his wife, who was lying dead on the bed. There is nothing on record to suggest the presence of any other person other than the son and second wife of the

appellant. However, the second wife of the appellant did not give any evidence in favour of the prosecution. Neither she came forward in favour of her husband in defence. In other words, the second wife chose not to speak anything about the incident.

As regards the other relative, i.e., the son of the appellant, he denied having any knowledge as to who had caused the death of his mother. He only stated that in the morning, he saw his mother lying dead on her bed and his father was sleeping at that time. On the day of the occurrence, he was also present in the house. Though he stated that there was no quarrel between the appellant and his mother on the day of the occurrence, the fact remains that on the day of the occurrence, he and his father were very much present in the house. The fact that the deceased died in the house and her dead-body was lying on the bed has been corroborated by the statement of other witnesses, namely, PW1, PW4, PW5 and PW9.

27. The fact that the deceased had received injuries on her body before she died is substantiated by the post mortem report and corroborated by the evidence of PW4, PW5 and PW9. The incident happened in the night as death of the deceased was discovered in the morning as stated by PW2, the son of the deceased and the appellant.

28. There is also medical evidence to show that injuries were ante mortem and the injuries caused on the head were fatal in nature and all the injuries were caused by blunt forced impact and homicidal in nature. Thus, if the deceased had suffered a violent death as clearly established by the medical evidence on record, it was not possible for any inmate of the house not to have learnt about the incident. Admittedly, there were no other person other than the members of the family who were present in the house when the death occurred that is, the appellant and his son (PW2). If that is so, the inmates of the house including the appellant had the obligation to explain what had transpired inside the house in which the violent death had occurred.

As also observed by the learned Trial Court if the deceased had suffered a violent death as indicated by the number of injuries received on her body, it was not possible that such injuries could have been received by the deceased without any noise. The injuries received by the deceased from the blunt forced impact clearly indicates that it can be done by none other than the appellant as he was the only male member who had strained relationship with her, who was sleeping in the same room. The other inmate, PW2, who is the son, could not have caused the injuries as the deceased was his own mother and there is no evidence that he had any strained relation with his mother and the death did not occur in his room, but in the room of his parents.

29. The appellant thus had a duty to explain the special circumstances happening within the four walls of the house, failing which necessary adverse inference could be drawn against him in terms of Section 106 of the Evidence Act.

As discussed above, the appellant chose to remain silent without offering any explanation as to the occurrence inside the house in which he was very much present who, naturally, would have knowledge of what had happened inside the house. Neither he chose to disclose anything nor he chose to lead any evidence to prove the hypothesis or possibility of his non-involvement or involvement of any other person.

30. It may be also noted that even though PW1 stated in his cross-examination that the appellant did not inform him that the appellant had killed his wife, his statement that there was a quarrel between the appellant and his wife remains unrebutted. This evidence, even if it is ignored, that he confessed to PW1 that he killed his wife, is a clear pointer to the circumstances leading to death which are adverse to the appellant and point to the guilt of the appellant.

31. Learned counsel for the appellant, however, submitted that no weapon was used to cause the injuries and it appears that the assault on the deceased by the appellant was due to certain quarrel or misunderstanding between them and it cannot be said that the appellant had any intention to kill his own wife. It has been also submitted that it cannot be said with certainty that the appellant had any intention to kill his wife, in which event, the conviction of the appellant under Section 302 IPC may be converted to Section 304 IPC and the appellant may be convicted and punished for commission of culpable homicide not amounting to murder.

32. As regards this submission, we have given our thoughtful consideration. It is true that no weapon was used to cause the injuries to the deceased. From the medical evidence, it is clear that injuries were caused by blunt force impact, which were, perhaps, caused by fist of the appellant. However, what we have also noted is that the injuries received by the deceased were substantial. The post mortem report clearly indicates that the deceased had received as many as 13 injuries. It was not one or two injuries. Further, as reproduced above, the post mortem report also indicates contusion over various parts of the head, fractured ribs and serious damage of the internal organs as well. Thus, a close examination of the injuries would show that the deceased had received serious injuries all over the body.

Under the circumstances, an inference can be drawn that the deceased was subjected to brutal assault by the appellant causing serious injuries on the vital parts of the body.

Therefore, this Court considering the nature and multiplicity of injuries involved, would unhesitatingly hold that it cannot be said that the appellant had no intention to kill the deceased or cause injuries which would most likely to cause death. Even though the appellant might have assaulted his wife in a fit of anger, yet in order to get the benefit of doubt of grave and sudden provocation, it was upon the appellant to prove his case, which was not forthcoming. Further, the nature of injuries would indicate that the deceased was subjected to sustained

assault which could have continued for a fairly long period, as it was not possible to cause such numerous injuries within a very short span of time by one individual. Accordingly, the conclusion, which can be arrived at, is that the appellant had brutally and mercilessly assaulted the deceased for a fairly long period injuring her entire body including vital parts of the body resulting in her death. We also have not seen any endeavour on the part of the appellant to render any help to his grievously injured wife who was left to die on the bed. Therefore, we are not inclined to accept the plea of the learned counsel for the appellant that the appellant had no intention to kill his wife and that the punishment be reduced. No mitigating circumstances have been brought to our notice which could warrant reducing the quantum of punishment.

33. In the present case, we are of the view that there are sufficient circumstantial evidences, which clearly point the finger of guilt towards the appellant. Any other conclusion other than the finding of guilt of the appellant would be perverse in the facts and circumstances of the case.

34. For the reasons discussed above, we dismiss this appeal as devoid of merit.

35. Send down the LCR.