



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

CRL.A(J)/24/2022

Dipak Urang,
S/O. Sri Budhu Urang,
R/O. Longswal,
Hatijan Out Garden Sirish
Line, P.S. Doomdooma,
District-Tinsukia, Assam.

.....Appellant

-Versus-

The State of Assam
Represented by PP, Assam.

.....Respondent

For Appellant : Ms. M. Barman, Amicus Curie
For Respondent : Mr. K. K. Das, Additional Public Prosecutor

Date of Hearing : 04.11.2024

Date of Judgment : 29.11.2024

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGMENT

(Mridul Kumar Kalita, J.)

- 1.** Heard Ms. M. Barman, learned Amicus Curie for the appellant. Also heard Mr. K. K. Das, learned Additional Public Prosecutor Assam.
- 2.** This Jail Appeal has been registered on filing of an appeal Under Section 383 of the Code of Criminal Procedure, 1973 by the appellant Sh. Dipak Urang, through the Superintendent of District Jail, Tinsukia.
- 3.** The appellant is presently detained in the District Jail, Tinsukia and serving out the sentence imposed on him by the impugned judgment.
- 4.** In this Appeal, the appellant has impugned the judgment dated 15.12.2021, passed by learned Sessions Judge, Tinsukia, in Sessions Case No. 50(T)/2019, whereby the appellant was convicted under Section 302 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs. 5000/- and in default of payment of fine, to undergo further simple imprisonment for six months.
- 5.** The facts relevant for the adjudication of the present appeal, in brief, are as follows.
 - i.** That on 28.02.2019, the father of the victim woman, namely, Naru Urang, had lodged an FIR before the Officer-in-Charge of Doomdooma Police Station, *inter-alia*, alleging that, on

27.02.2019, at about 7.00 p.m., the son-in-law of the informant, namely, Shri Dipak Urang, had quarreled with his daughter, Smt. Arshita Naresh and caused serious injury to her by hacking her with a "dao" on her head. It is also stated in the FIR that though, the victim was immediately taken to Longsowal Medical, she succumbed to her injuries on the way.

- ii.** On receipt of the said FIR, the Officer-in-Charge of Doomdooma Police Station registered Doomdooma P.S. Case No. 57/2019 under Section 302 of the Indian Penal Code and entrusted one Jitumani Baishya, SI of Police, to investigate the case.
- iii.** After completion of the investigation, finding sufficient materials against the present appellant, the Investigating Officer had laid the charge sheet bearing charge sheet No. 64/2019, dated 21.06.2019 under Section 302 of the Indian Penal Code.
- iv.** On the basis of materials available on record, the Trial Court, on 26.07.2019, framed the charge under Section 302 of the Indian Penal Code against the present appellant. When the said charge was read over and explained to him, the appellant pleaded not guilty to the said charge and claimed to be tried.
- v.** The appellant faced the trial remaining in custody. To bring home the charges, the prosecution side examined as many as 15 prosecution witnesses.
- vi.** Though, during his examination under Section 313 of the Code of Criminal Procedure, 1973, the appellant denied the

truthfulness of the testimony of the prosecution witnesses and pleaded his innocence, however, he did not adduce any evidence in his defence.

- 6.** Before considering the rival submissions of learned counsel for both the sides, let us go through the evidence available on record.
- 7.** PW-1, Shri Naru Urang, has deposed before the Trial Court that he is the complainant of the case and the deceased Arshita Naresh was his daughter. He has also deposed that the appellant had married his daughter and he used to reside in Sirish line of Longsoal Tea Estate and they had three children. He has deposed that he does not remember the date and month of the incident. However, on the day of incident, in the evening, someone informed him over mobile phone that his daughter was killed by the appellant and she was taken to Longswal hospital. He has deposed that he went to the Longswal hospital and saw the dead body of her daughter there and he saw cut injuries on her neck and at that time police was also present in the hospital. He has deposed that thereafter, police took away the dead body of his daughter to police station and he was called to the police station where he lodged the FIR which is exhibited as Exhibit-1.
- 8.** During his cross-examination, he has denied the suggestion that he has deposed falsely before the Court.
- 9.** PW-2, Shri Budhu Urang, who is the father of the appellant has deposed that the incident occurred in the month of February. However, he does not remember the date of the incident. He has

also deposed that the incident took place at around 7.00 p.m. He has stated that at the time of the occurrence, the two sons of the deceased were watching TV while their daughter was sleeping. He has deposed that in the house of the appellant there are three rooms and in one of the rooms, the sons of the appellant were watching TV and in another room the incident took place. He has deposed that after the incident the sons of the appellant raised hue and cry and on hearing their cries, he went to their house and saw that his daughter-in-law was lying on the floor and she had cut injuries on the backside of her neck. He has also stated that she was bleeding from that wound, and he had tied the wound with a "*gamosa*". PW-2 has also deposed that his other son Gulshan brought a "*thela*" (hand card) and in the said "*thela*" they took the deceased to the hospital. He has also deposed that doctors in the hospital had informed the police and police visited the house of the appellant and took some articles and the police seized one sack, some cut hairs, one blanket and blood samples from the floor and one "*dao*" and prepared the seizure list.

- 10.** During cross-examination, PW-2 has deposed that police had visited the house of the appellant on the next day of the occurrence.
- 11.** PW-3, Shri Ganesh Bhumij, has deposed that the deceased Arshita Naresh was his maternal aunt, and there are about four houses in between his house and the house of the appellant. He has deposed that on the date of incident, he heard hue and cry from the house of the appellant, and he went there but could not find the injured in her house, as she was already taken to the hospital. Later on, when

PW-3 went to the Longswal Central hospital, he found that she had already died. He has also deposed that he could not see any injury on the body of the deceased. He has also deposed that when police came to the house of the appellant, he also came there along with them and saw that there were bloodstains on the floor of the house. He also saw some cut hair strands on the floor. PW-3 has also deposed that police picked up one blanket and with it they took the samples of blood from the floor and prepared one seizure list which is exhibited as Exhibit-2. He has also deposed that police also seized a blouse and a petticoat and prepared seizure list which is exhibited as Exhibit-3. He has also deposed that he heard people saying that the appellant has committed the offence. He has also deposed that Amir Urang, Samir Urang and Enika Urang, who are the children of the appellant were present in the house.

- 12.** During cross examination, he has deposed that the sister-in-law of the appellant had told him that she was present at the place of occurrence, at the time of occurrence and the children of the appellant namely, Samir Urang, Amir Urang and Enika Urang were also present in the house.
- 13.** PW-4, Shri Kiran Sonichorua @ Karmakar, has deposed that at the time of occurrence of the incident, he was in his house and his house is situated at a distance of about less than half a kilometer from the place of occurrence. He has deposed that he was told by some persons of his locality that the appellant has committed murder of his wife. He immediately went to the place of incident. He saw the

injured Archita was being loaded in a hand push cart and she had a bandaged injury on her neck. PW-4 has also deposed that the deceased died on her way to hospital and the doctors told him to call the police and accordingly, he gave a telephone number of the police station to the doctor who informed the police. He has deposed that within half an hour the police reached the hospital and took the dead body and thereafter, on that day, the police visited the place of occurrence. He has deposed that the incident occurred inside the house of the appellant where he saw bloodstains on the floor and those were covered with a blanket. He deposed that the police picked up that blanket and found strands of cut hair on the floor. PW-4 has also deposed that the appellant showed the police a sharp weapon in the kitchen, which is a "*Kalam Katari*"(a bill hook), which contained blood stains. He has deposed that the said weapon was about two feet long. He has deposed that the police also seized one blouse and one petticoat and prepared seizure list in his presence on which he appended his signatures. PW-4 has also deposed that he asked the son of the appellant namely, Samir Urang as to how the occurrence took place and he was told by him that his father had committed the offence. He has deposed that inquest was conducted and he exhibited the inquest report as Exhibit-5 and his signatures thereon as Exhibit-5 (1). He has deposed that he saw that the deceased had sustained a cut injury on the right side of her neck.

- 14.** During his cross examination, he has deposed that he did not tell police that Sameer had told him that the appellant had committed

the offence. He also did not tell police that the "*dao*" was recovered on being shown by the appellant. He has answered in negative to the suggestive questions put to him by the defence counsel to the effect that he is deposing falsely.

- 15.** PW-5, Amir Urang, who is the elder son of the deceased and who was aged about 15 years when his testimony was recorded, has deposed on oath that on 27.02.2019 at about 7.00 p.m., he was in his house. He has deposed that on that day in the evening his father (appellant) returned home under the influence of liquor and therefore, his mother (deceased) said some harsh words to him and asked him to go out of the house. He has deposed that after some verbal quarrel the appellant became angry and dealt a "*dao*" blow on the back of the neck of his mother and his mother fell down immediately. He has deposed that he had seen the incident and there was hue and cry. He has deposed that on hearing hue and cry their neighbours, grandfather Budhu Urang, paternal aunt Gita Urang came to their house. He has also deposed that at the time of incident the younger brother Samir Urang and his younger sister Ani Urang were also present in the house. He has further deposed that thereafter, someone brought one "*thela*" (hand push cart) and took his mother to Longsoal Hospital. He also accompanied his mother to hospital. He has deposed that his mother was still alive. However, in the hospital she died. He has deposed that on the date of occurrence, at night police came to their residence and took his statement and inspected their house. He also deposed that police

produced him before the Court for recording his statement and his statement was recorded by the Magistrate. He has exhibited the said statement as Exhibit-6 wherein his signatures are exhibited as Exhibit-6 (1). He has also deposed that the police also brought his younger brother Samir to the Court for recording his statement. He has also deposed that his father (appellant) used a "*Kalam Katari*"(a bill hook) to assault his mother.

- 16.** During cross examination he deposed that at the time of occurrence he was in class nine. He has also deposed that his mother fell down on the front door of the house and she was lying there in injured condition. He has deposed that he has not seen the "*Kalam Katari*", which was used by the appellant for assaulting his mother, in the Court on the day when he deposed before the Court. He has answered in negative to certain suggestive question put to him by the learned defence counsel during his cross-examination.
- 17.** PW-6, Samir Urang, who was aged about 12 years, when he deposed before the Court, and who is the younger son of the deceased, was examined by the Trial Court in question and answer form. Before examining him on the facts of the case, his capability to give rational answers to questions posed to him was examined by the Court and it was endorsed by the Court that the witness PW-6 is able to give rational answers to the questions put to him.
- 18.** During his examination-in-chief, he has deposed that his father took the life of his mother by killing her at night in their house. He has also deposed that at the relevant time of the incident, his brother

Amir and sister Ani were also present in his house. He has also deposed that a quarrel took place between his father and mother in connection with money. However, he has deposed that he did not witness the incident himself as he was in another room at the time of the incident and his elder brother Amir told him about the incident. He also deposed that his mother sustained injury on her neck and his statement was recorded by the Magistrate. His mother sustained injury on her neck by a "*dao*". He has also deposed that his statement was recorded by the Magistrate which is exhibited as Exhibit-7 wherein his signatures were exhibited as Exhibit-7 (1) and Exhibit-7 (2).

- 19.** During his cross-examination, he has deposed that at the time of incident he was watching a movie on TV in a loud volume and his brother Amir came weeping to his room and as such, he came out of his room and saw his mother lying in front door of the house.
- 20.** PW-7, Sri Gulshan Minz, who is the younger brother of the appellant, has deposed that on 27.02.2019 at about 7.00 p.m. to 8.00 p.m. he heard hue and cry of children of the appellant saying that their mother was beaten up by their father. On this, he immediately went to the house of the appellant and saw the deceased was lying inside the house with neck injury. Thereafter, many villagers also gathered there and they took the victim to the Garden hospital where she was declared dead. He also deposed that police conducted inquest over the dead body and Exhibit-5 is the inquest report and Exhibit-5(2) is his signature on this thereon.

- 21.** During cross-examination, PW-7 has deposed that when he went to the house of the appellant he found his father Budhu Urang there. He also deposed that he saw Archita lying in the second room of the house.
- 22.** PW-8, Smti Gita Urang, has deposed that, on 27.02.2019, at about 7.00 p.m., she was in her house. At that time, the younger son of the appellant, namely, Samir came to their house and told that his father (appellant) has killed his mother with a "*dao*". On this immediately, PW-8 came to the house of the appellant along with her husband and saw Archita lying on the ground inside the house. She also saw a neck injury on her. PW-8 has further deposed that the appellant was standing in front of Archita and thereafter, Archita was taken to Longsoal hospital where she died.
- 23.** During cross-examination, she has deposed that her house is situated at a distance of 50 meters away from the house of the accused and when Samir came to her house she was there along with her husband. She also admitted that she had not stated before police that Samir told him that his father killed his mother with a "*dao*".
- 24.** PW-9, Sri Samu Pator, has deposed that on the day of incident he was in his house and after hearing hue and cry he came out of his house and went to the house of the appellant. However, he did not enter into the said house. He has also deposed that on the next day police came and searched the house. Police came and seized one bed sheet, blanket and hair from the house of the appellant and prepared

the seizure list. He had put his signatures on the seizure list as Exhibit-2 (3) and Exhibit-4 (2).

25. PW-10, Shri Sanjay Bhumij, has deposed that on the day of incident, at about 6.00 p.m. to 7.00 p.m., he was present in a shop, which was situated at a distance of about 500 meters from the house of the appellant. Suddenly, one Ajay Pator came there and shouted that one person was killed and he informed that the wife of the appellant has been killed. He has also deposed that the injured Archita Urang was shifted to hospital in the hand cart of Gulshan Minz, who is the brother of the appellant. He has also deposed that the appellant also went to the hospital, but the doctors declared that Archita Urang was brought dead to the hospital. He has also deposed that thereafter, police came to the house of the appellant and he heard that one "*dao*" was seized by the police. Police prepared one seizure list which is exhibited as Exhibit-8 and his signatures there on as Exhibit-8 (1).
26. During his cross-examination, he has deposed that the injured was accompanied to the hospitals by many persons, however, he could recognize Gulshan Minz as well as the appellant amongst them. He has also answered in negative to certain suggestive questions put to him by the learned defence counsel.
27. PW-11, Sri Nirdul Urang, has deposed that on the date of incident he came to know that the appellant has caused cut injury to his wife. He has deposed that at that time it was raining and his house is situated about 200 meters away from the house of the appellant and therefore, he was in his own house. He has deposed that the wife of

the appellant was shifted to Longswal Hospital where he also went to the hospital. He has deposed that as the body of the Archita was covered completely by cloth, he could not see her injuries. He has also deposed that police came to the place of occurrence and seized some clothes of the appellant and hairs, and prepared a seizure list which is exhibited as Exhibit-8, wherein his signatures are exhibited as Exhibit-8 (2).

- 28.** During cross examination, PW-11 has deposed that he has no personal knowledge about the incident and he is unaware as to from where the police has recovered the clothes. He has also deposed that he is unaware about the contents of Exhibit-8.
- 29.** PW-12, Sri Nipen Urang, has deposed that the deceased Archita Naresh was his sister-in-law and the appellant is his brother. He has stated that he was at Daidam Tea Estate on the fateful night and at about 11.00 p.m., he was informed over phone by Bipin Urang that the appellant had killed his wife. He has deposed that on the next day morning, he came to the police station and saw the dead body of Archita Naresh. Police brought some wearing apparel of the deceased like blouse, *mekhela*, bangle and chains and seized the same and prepared one seizure list which is exhibited as Exhibit-3, wherein he put his signatures as Exhibit-3 (3).
- 30.** During cross-examination, the PW-12 has deposed that the post-mortem examination of the deceased was conducted at about 4.00 p.m. on the next day of day of occurrence. He has also deposed

that the police obtained his signatures on a blank paper in the morning.

- 31.** PW-13, Dr. Vikas Sharma, has deposed that, on 28.02.2019, he was working as Medical and Health Officer No. 1 at Tinsukia Civil Hospital and on that day, at about 3.00 p.m., he conducted the post-mortem examination on the dead body of Archita Naresh, aged about 40 years, female, in connection with Doomdooma P.S. GD Entry No. 804 dated 27.02.2019. The dead body was escorted by UBC/619 Madhav Dutta and Gulshan Minz, the brother-in-law of the deceased. PW-13 has deposed that on examination, he found following:

"A dead body of female of around 40 years, average built, wearing a red blouse, blue petticoat and red check Mekhela, eyes and mouth open. Rigor mortis found all over body.

Injuries :

1. a sharp incised wound of size 25 X 5 cm x bone deep. It was extending from the left side of occipital bone to the right side angle of mandible with extra-dural, subdural and intra-cerebral hemorrhage. Membranes were cut and underlying vessels and brain matters were also incised."

He has deposed that in his opinion the death was due to shock and hemorrhage caused by the injuries as described which were ante-mortem in nature, caused by sharp cutting instrument and homicidal in nature. The approximate time since death was about 12 to 24 hours. He exhibited the post-mortem examination report as Exhibit-9 and his signatures thereon as Exhibit-9 (1). He also exhibited the inquest report as Exhibit-5.

- 32.** During cross-examination, PW-13 has deposed that there was only a single injury found on the dead body. The occipital region lies at backside of the head and there was no injury over neck.
- 33.** PW-14, Shri Trishul Urang, who is the brother of the deceased, has deposed that on 27.02.2019, at about 8.00 p.m., Gulshan Minz, (brother of the appellant) informed him over telephone that his sister has been assaulted by the appellant, and she was taken to Longswal hospital. On hearing this, PW-14 along with his father, wife and others, went to Longswal Hospital, where they came to know that her sister had already died. He has deposed that he saw the injury on the head of his deceased sister.
- 34.** During cross examination, he has deposed that he met Amir and Samir, who are the sons of the deceased, in the hospital.
- 35.** PW-15, Shri Jitumoni Baishya, SI of police, who is the Investigating Officer of the case, has deposed that, on 27.02.2019, he was working at Doomdooma Police Station as Probationary Officer. On that day, at about 8.30 p.m., information was received from Longswal Central Hospital that one woman, namely Archita Naresh, wife of the appellant, died on account of injury caused to her by a sharp weapon. Accordingly, the Officer-in-Charge of Doomdooma Police Station made a GD Entry No. 804, dated 27.02.2019 and entrusted PW-15 to conduct the investigation. The extract copy of the GD Entry is exhibited as Exhibit-10.
- 36.** PW-15 has further deposed that on receipt of this said information, he along with his staff went to Longsawl hospital and saw the dead

body of woman at the hospital gate. He has deposed that he noticed a cut injury on the upper side of the neck of the dead body. The clothes of the dead body were stained with blood. He has also deposed that he met Kiran Sonsorua, Gulshan Minz and Ganesh Bhumij near the dead body. He also found the appellant, Dipak Urang in the hospital and he took Dipak Urang in his custody. He arrested Deepak Urang. PW-15 has also deposed that he recorded the statement of witnesses namely, Kiran Sonsorwa, Gulshan Minz and Ganesh Bhumij and the doctor Nirman Gogoi in the hospital. He has also deposed that he visited the place of occurrence and when he entered the house of the appellant, he found four rooms inside the house which was built of by bamboo and CI sheets. PW-15 has also deposed that he found one blanket near the entry of the second room which was stained with blood. He has also deposed that after removing the blanket, he found a gunny bag, which was also stained with blood. He also found some hairs near the jute bag. He collected the samples of the blood stains from the floor and seized the blood stained blanket in presence of witnesses namely, Ganesh Bhumij, Kiran Sonsorua, Samu Pator and Budhu Urang. PW-15 has also deposed that he recorded the statement of witnesses. At that time, the appellant was present with him at the place of occurrence. He has deposed that on interrogation, the appellant brought out the weapon of offence, which is a "*dao*" from the kitchen where it was hidden. He seized the dhow and prepared a seizure list which is exhibited as Exhibit-4, wherein his signature is exhibited as Exhibit-4

(3). He has also deposed that the T-shirt worn by the appellant were also stained with blood. Hence, he seized the T-shirt of the appellant in presence of Sanjay Bhumij and Nirdul Urang and prepared a seizure list which is exhibited as Exhibit-8. He has deposed that on the next day morning he called the Circle Officer of Doomdooma Revenue Circle for the purpose of conducting inquest. Accordingly, inquest was conducted over the dead body in the presence of witnesses. He has also deposed that a red coloured blouse was worn by the deceased, which was stained with blood and one blue coloured petticoat was also there which also contained blood stains. He seized the said wearing apparels in presence of witnesses and exhibited the said seizure list as Exhibit-3. He has exhibited the blood-stained blanket as material Exhibit-1, the gunny bag as material Exhibit-2, some hairs of the deceased as Material Exhibit-3, the weapon of offence, the bill hook (*"Kalam Katari"*) as Material Exhibit-5, the pink coloured T-shirt of the appellant as Material Exhibit-6, red coloured printed blouse as Material Exhibit-7, and blue coloured petticoat as Material Exhibit-8. He has exhibited the sketch map of the place of occurrence as Material Exhibit-11. He has also deposed that he also took steps for recording the statement of the sons of the deceased, namely, Amir Urang and Samir Urang recorded under Section 164 of the Code of Criminal Procedure, 1973. He has also deposed that on 16.03.2019, he sent the "*dao*", pink coloured T-shirt and red blouse and blue coloured petticoat to the Office of the Superintendent of Police for sending the same for Forensic

Laboratory Examination. He has deposed that he received the report of forensic laboratory on 14.06.2019. The said report is exhibited as Material Exhibit-9. Ultimately, on completion of investigation, finding sufficient materials against the appellant, he laid the charge sheet, which is exhibited as Exhibit-12.

- 37.** During cross-examination, PW-15 has deposed that a Probationary Officer is required to visit the place of occurrence with a Senior Officer and he is required to assist in the investigation. He has deposed that after seizing the blood-stained sky-blue-coloured petticoat and red-printed blouse of the deceased, he kept the seized articles in Malkhana with Malkhana No. 49/2019. However, the said MR where the signature of Chief Judicial Magistrate is found, the number is mentioned as MR No. 14/2019 and it does not bear his signatures or that of any of the witnesses. He has also deposed that at the time of post-mortem examination of the dead body, the deceased was wearing red-coloured blouse and sky-blue petticoat and a red-checked *mehkela*. He denied the suggestion that he prepared a false seizure list bearing MR No. 14/2019.
- 38.** He has also deposed that on 27.02.2019, he did not find the witnesses Samir and Amir Urang at the place of occurrence. He has also stated that except PW-5 and PW-6, all other witnesses were hearsay witnesses and none of them have stated in their statement that they were informed about the incident by PW-5 and PW-6. He has also deposed that he found the appellant present near the dead body of the deceased in the hospital. He has also deposed that there

is no endorsement in the case diary regarding the fact that he had investigated to ensure whether the appellant was present at the place of occurrence on 27.02.2019. He has also deposed that during his first visit to the place of occurrence, he has not obtained any fingerprint from the weapon of offence to ascertain as to whether the fingerprints of the appellant were there. He has also deposed that he has not investigated to find out what is the blood group of the deceased. He has answered in negative to certain suggestive questions put to him by the learned defence counsel.

- 39.** The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 by the Trial Court. During his examination, the appellant has denied the truthfulness of the testimony of prosecution witnesses. He has also pleaded his innocence. He has also stated that on the day of incident, when he entered into his house after working outside, he found his wife lying down. He has also stated that he carried his wife to the hospital. The appellant has also stated that the case has been lodged against him on false ground. However, he declined to adduce any evidence in support of his defence.
- 40.** Ms. Meghali Barman, learned Amicus Curiae appearing for the appellant has submitted that out of the 15 prosecution witnesses, there was only one eyewitness and others have not witnessed the incident themselves and their evidence is only hearsay evidence. However, she fairly submits that the testimony of sole eyewitness, namely, Amir Urang, i.e., PW-5, who is the elder son of the appellant

as well as the deceased and who was present at the crime scene when the offence was committed, was corroborated by his statement which was recorded under Section 164 of the Code of Criminal Procedure, 1973, and which has been exhibited as Exhibit-6. She has deposed that the other son of the deceased namely, PW-6, Samir Urang has stated in his answer to question No.12 put to him that at the time of the alleged incident he was in another room watching a movie. Learned Amicus Curiae for the appellant has also submitted that the appellant never intended to kill his wife and therefore, he did not flee away after the incident.

- 41.** The learned Amicus Curiae appearing for the appellant has also submitted that the conduct of the appellant in taking the deceased to the hospital shows that he did not intend to kill his wife. She has also submitted that the injury caused to the deceased was due to provocation by the deceased as it is evident from the testimony of PW-5 that the deceased was quarrelling with her husband saying harsh things to him after he came to the residence in an inebriated condition. She also submits that the testimony of PW-13 as well as the post-mortem examination reports shows that only single injury was found on the dead body, which itself shows that the appellant gave only single blow and he never intended to kill the deceased. She has also submitted that though, the Material Exhibit-9 i.e., the FSL report shows that the wearing apparel and the weapon of assault i.e., the wooden handle "*dao*" gave positive test for human blood of blood Group-A, however, there is no material on record to suggest that the

blood found on the said exhibits were that of the deceased or that the deceased also had blood Group 'A'.

- 42.** The learned Amicus Curiae for the appellant has also submitted that the facts and circumstances as evident from the materials on record clearly shows that the case in hand is not a case of murder but a case of culpable homicide not amounting to murder as the exception 4 to Section 300 of the Indian Penal Code is applicable in this case. She submits that as the appellant was in an inebriated condition and there was a quarrel between husband and wife on the day of incident, which provoked the appellant to assault his wife and as there was only a single blow, he never intended to kill his wife. She has submitted that the case would fall within exception 4 to Section 302 of the Indian Penal Code and therefore, she submits that the conviction of the appellant under Section 300 of the Indian Penal Code may be altered to conviction under Section 304 Part-II and the sentence imposed on him may be accordingly reduced.
- 43.** On the other hand, Mr. K. K. Das, learned Additional Public Prosecutor, has submitted that the Trial Court has rightly convicted the appellant under Section 302 of the Indian Penal Code, for the offence of murder of his wife and the said conviction does not warrant any interference by this Court in this appeal. He submits that the elder son of the appellant, i.e., PW-5, is the eyewitness to the incident of assault and he has categorically stated in his testimony that the appellant has assaulted his wife with a bill hook on the back side of her neck. He also submits that the testimony of PW-5 has

been corroborated by other circumstantial evidence on record as well as his own statement recorded under Section 164 of the Code of Criminal Procedure, 1973. He has also submitted that the evidence of PW-5 could not be controverted during his cross-examination by the defence side. He has also submitted that the appellant was present in his house when the incident had occurred, apart from stating that when he reached his home he found his wife lying on the floor. The appellant has not stated anything as to why his own son has deposed falsely against him.

- 44.** Learned Additional Public Prosecutor has also submitted that the case in hand does not fall within any of the exceptions to Section 300 of the Indian Penal Code. Hence, the conviction of the appellant under Section 302 of the Indian Penal Code by the Trial Court does not warrant any interference by this Court.
- 45.** We have considered the submissions made by the learned counsel for both the sides. We have also gone through the evidence available on record meticulously.
- 46.** On perusal of the impugned judgment, it appears that the Trial Court has mainly relied on the testimony of PW-5 and PW-6, namely, Amir Urang and Samir Urang, both are the sons of the appellants, who were present at the place of occurrence at the relevant time, when the incident had occurred. The Trial Court has correctly come to the conclusion that the presence of PW-5 and PW-6 in the house of the appellant when the incident occurred has not been disputed by anyone.

- 47.** Though, the appellant has stated in his examination under Section 313 of the Code of Criminal Procedure, 1973 that when he reached his house he found the deceased lying on the floor, however no evidence has been led to lend support to this version of the appellant. Whereas, the testimony of PW-5 and PW-6 clearly shows that a quarrel took place between the deceased as well as the appellant before the assault by the appellant on the deceased. The Trial Court has correctly discarded the submissions of the learned defence counsel to the effect that the PW-5 is an interested witness, as nothing could be shown as to why the PW-5, who is the son of the deceased as well as of the appellant, would falsely testify against his own father and would falsely implicate his father of causing death of his mother.
- 48.** We also do not find any error in the conclusion arrived at by the Trial Court in holding the fact that the appellant was in an inebriated condition would not help him as there is no evidence on record to show that the thing which intoxicated the appellant was administered to him without his knowledge or against his will, hence, the general exceptions to criminal liability as provided under Section 85 of the Indian Penal Code would not come in aid of the present appellant in this case.
- 49.** In the backdrop of the aforesaid discussion, it is required to be seen as to whether the offence would be one which would come under the definition of Murder as per Section 300 of the Indian Penal Code or would amount to Culpable Homicide not amounting to Murder.

- 50.** The Supreme Court in the case of ***Anda and others. Vs The State Of Rajasthan*** reported in **AIR 1966 SC 148** has laid down as follows:

"5. Section 300 tells us when the offence is murder and when it is culpable homicide not amounting to murder. Section 300 begins by setting out the circumstance when culpable homicide turns into murder which is punishable under S. 302 and the exceptions in the same section tell us when the offence is not murder but culpable homicide not amounting to murder punishable under S. 304. Murder is an aggravated form of culpable homicide. The existence of one of four conditions turns culpable homicide into murder while the special exceptions reduce the offence of murder again to culpable homicide not amounting to murder. We are not concerned with the exceptions in this case and we need not refer to them.

...

7. ...The sufficiency of an intentional injury to cause death in the ordinary way of nature is the gist of the clause irrespective of an intention to cause death. Here again, the exceptions may bring down the offence to culpable homicide not amounting to murder."

- 51.** Section 300 of the IPC lays down 5 exceptions where culpable homicide would not amount to murder. However, it is settled law that an offence under Section 299 of the IPC not to fall under the offence of murder under Section 300 would not be restricted only to the five exceptions. For a culpable homicide to be murder, it must come

within the four provisions of Section 300. Murder is the gravest form of culpable homicide. At this stage it will be beneficial to refer to the principles laid down by the Hon'ble Supreme Court in the case of ***State of AP vs Rayavarapu Punnayya and Anr.*** reported in ***AIR 1977 SC 45***.

"21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Sec. 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be

'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code."

52. Further in the case of **Kishore Singh and anr. vs. The State of M.P.** reported in **AIR 1977 Sc 2267** it has been laid down as follows:

"11. The distinction between culpable homicide (Section 299, I.P.C.) and murder (Section 300, I.P.C.) has always to be carefully borne in mind while dealing with a charge under Section 302, I.P.C. Under the category of unlawful homicides fall both cases of culpable homicide amounting to murder and those not amounting to murder. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300, I.P.C. But even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300, I. P. C. to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300, I. P. C., namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under S. 299, I. P. C."

53. There is another aspect of the matter regarding the nature of the assault. Though the weapon alleged is a bill hook, the prosecution case is that only one blow was given which is corroborated by the medical evidence. Though there is no strait jacket formula that where only a single blow is involved, there may not be an intention to cause death, it would be necessary to examine the particular facts and circumstances. In this connection it would be beneficial to refer to the case of ***Abani K. Debnath and anr. Vs State of Tripura*** reported in ***2005 13 SCC 422*** wherein the Hon'ble Supreme Court on noticing that the death was caused by one blow of a *dao* in the spur of the moment which was preceded by a quarrel had converted the punishment from Section 302 of the IPC to 304 Part II.
54. In the case of ***Pularu vs. State of M.P.*** reported in ***AIR 1993 SC 1487***, the Hon'ble Supreme Court was dealing with a case where death was caused by a single blow with an agricultural equipment. It was held as follows:

"7. That takes us to the nature of the offence. All the three eye-witnesses have spoken that the appellant dealt only one blow with the agricultural implement. Having regard to the time and the surrounding circumstances it is difficult to hold that he intended to cause the death of the deceased particularly, when he was not armed with any deadly weapon as such. As an agriculturist he must have been having a tabbal in his hands and if in those circumstances he dealt a single blow it is difficult to convict him by invoking clause (1) or (3) of Section 300, I.P.C. It cannot be said that he intended to cause that particular injury which

unfortunately resulted in the fracture of bones. Therefore, the offence committed by him would be one amounting to culpable homicide punishable under Section 304, Part-II I.P.C. We accordingly set aside the conviction of the appellant under Section 302, I.P.C. and sentence of imprisonment for life awarded thereunder. Instead we convict him under Sec. 304, Part-II, I.P.C. and sentence him to undergo Rigorous Imprisonment for seven years. The appeal is partly allowed to the extent indicated hereinabove."

- 55.** We have also noticed that though the *dao* was proved as Material Ext. 5 and FSL also done, there is no materials to show that any finger print matching was done with the aforesaid weapon.
- 56.** In the case in hand, apart from one blow and also the aspect of no finger print being matched, it is on record that the appellant had accompanied the injured deceased to the hospital. His intention to cause death cannot be readily inferred.
- 57.** Under the aforesaid facts and circumstances and the discussions made we are of the view that the conviction is liable to be made under Section 304 Part II of the IPC which is accordingly done. Consequently, the sentence is altered to rigorous imprisonment for a period of 7 years with fine of Rs. 5000/- (Rupees Five Thousand) in default of which simple imprisonment for 6 months.
- 58.** Let the records of the case be sent back

59. For the valuable assistance rendered by the learned Amicus Curiae, we record our appreciation and she would be entitled to the prescribed fee.

JUDGE

JUDGE

Comparing Assistant