

GAHC010001062022



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

Case No. : CRL.A(J)/1/2022

BALURAM BORO
MORIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. N K BARUA, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

Date of hearing : 14.05.2024

Date of judgment : 17.05.2024

JUDGMENT & ORDER (CAV)

(Suman Shyam, J)

Heard Mr. N. K. Barua, learned Amicus Curiae appearing for the appellant. We have also heard Ms. B. Bhuyan, learned senior counsel (Additional Public Prosecutor,

Assam) assisted by Ms. M. Chakraborty, learned counsel appearing for the State of Assam.

2. The present appeal, preferred from Jail, arises out of the judgment and order dated 01.10.2021 passed by the learned Sessions Judge, Morigaon in Sessions Case No.37/2020 whereby, the sole appellant had been convicted under Section 302 of the Indian Penal Code (IPC) for committing the murder of his wife Golapi Boro @ Jelepi Boro and sentenced to undergo rigorous imprisonment for life and also to pay fine of Rs.5000/-, in default, to undergo simple imprisonment for three months.

3. On 22.12.2019 six villagers of Banmuri Village had jointly lodged an ejahar before the Officer-in-Charge, Bhuragaon Police Station informing the police that at around 3:30 P.M. on that day, a co-villager named Boloram Boro had killed his wife Golapi Boro in his own house by assaulting her with a bamboo stick. On receipt of the ejahar, Bhuragaon P.S. Case No.181/2019 was registered under Section 302 of the IPC on 22.12.2019 and the matter was taken up for investigation. On completion of investigation the police had submitted charge-sheet against the accused/appellant under Section 302 of the IPC, based on which, the learned trial court had framed charge against the accused under Section 302 of the IPC. Since the accused had denied the charge brought against him and claimed to be tried, the matter went up for trial.

4. The prosecution case is based on circumstantial evidence. To bring home the charge, the prosecution side had examined as many as eight (8) witnesses. The defence side did not adduce any evidence. However, while recording the statement

of the accused under Section 313 Cr.P.C, he had pleaded innocence. Upon analyzing the evidence brought on record by the prosecution side, the learned trial court has held that the charge brought against the accused under Section 302 of the IPC has been established beyond reasonable doubt. Accordingly, the appellant was convicted and sentenced as aforesaid.

5. Assailing the impugned judgment dated 01.10.2021 passed by the learned Sessions Judge, Morigaon, Mr. N. K. Barua, learned *Amicus Curiae* has argued that although he is not pressing for an order of acquittal of the appellant in this case, yet, it is apparent from the materials on record that the incident took place under heat of passion, following a quarrel that broke out between the appellant and his wife. He further submits that considering the weapon used in this case and the possibility that it could be a case of a “single blow”, Mr. Barua submits that there was no intention on the part of the appellant to commit the murder of his wife. On such ground the learned *Amicus Curiae* has prayed for conversion of the conviction and sentence of the appellant to bring it within the fold of Section 304 Part-II of the IPC.

6. Ms. B. Bhuyan, learned Additional P.P., Assam, on the other hand, submits that the prosecution has not only proved the murder charge brought against the accused by adducing cogent evidence on record but it has also been established that the appellant had struck the deceased on the vital part of the body by delving as many as two blows. Therefore, submits Ms. Bhuyan, there is no scope for conversion of the conviction of the appellant from Section 302 IPC to one under Section 304 Part II of the IPC in the facts and circumstances of the case.

7. We have considered the submissions made at the Bar and have also gone through the materials available on record.

8. As has been noted herein above, the prosecution case is based on circumstantial evidence. In order to establish the charge the prosecution had examined Sri Dilip Boro, the village Headman and one of the informants as PW-1. This witness has deposed that on the date of the incident i.e. on 22.12.2019, at about 3:00 p.m. one Dehiram Boro (PW-2) had informed him over phone that Boloram Boro had killed his wife by assaulting her with a bamboo stick. On hearing that, he went to the house of Boloram Boro and saw that his wife Golapi Boro was lying dead in the courtyard with bleeding injuries on her head. Boloram Boro was sitting nearby. On his asking Boloram Boro he had replied that due to an altercation with his wife he had assaulted her with a bamboo piece on her head. This witness has also stated that the VDP Secretary Dehiram Boro had informed the police and after about 30 minutes of his arrival, police came to the place of occurrence and interrogated Boloram Boro. Before the police also the accused had confessed by admitting that he had hit his wife on the head with a bamboo stick. PW-1 has confirmed that he is one of the signatories of the F.I.R. submitted before the Bhuragaon Police Station (Ext-1) by identifying his signature therein. He is also a signatory to the inquest report Ext-2. In his cross-examination, PW-1 has remained firm and has further stated that the F.I.R. might have been signed by 5/6 people. He has denied the suggestion that the accused did not confess before him that on an altercation with his wife he had assaulted Golapi Boro alias Jelepi Boro with a bamboo stick on her head.

9. PW-2 Dehiram Boro is another informant who had signed the ejahar (Ext-1). This witness has also deposed that on the date of the incident i.e. 22.12.2019, at about 3 to 4 p.m. when he was going to the field, one village woman by the name Pomi Boro had informed him that Boloram Boro had killed his wife Golapi by assaulting her on the head. On hearing the same, he went to the house of Boloram Boro and saw that Golapi was lying dead in the courtyard having bleeding injuries on her head and Boloram Boro was sitting nearby. On being asked, Boloram told him that he had assaulted his wife with a bamboo piece on her head and that he would not escape if the police arrive at that place. Thereafter, he informed the police as well as the local Gaonburah (village headman) Dilip Boro. After sometime, Dilip Boro (PW-1) arrived at the spot and just after his arrival, police also came there and interrogated Boloram Boro. This witness has stated that before the police came to the place of occurrence, Boloram Boro had confessed his guilt by saying that he had hit on the head of his wife with a bamboo stick. PW-2 has deposed that the police had conducted inquest on the dead body and had also seized the bamboo stick vide seizure-list Ext-3 which bears his signature. Subsequently, the villagers filed an ejahar. This witness could not be shaken during his cross-examination.

10. PW-3 Sri Bubul Boro is another co-villager who had gone to the place of occurrence after the incident and had seen the body of Golapi Boro lying in the courtyard. This witness had also stated that Boloram Boro was sitting nearby. On his asking, Boloram Boro told him that he had assaulted his wife with a bamboo stick. According to this witness, the police was also present there and interrogated Boloram. PW-3 is also a seizure witness of the bamboo stick (Mat. Ext-1) seized by the

police vide seizure-list Ext-3. In his cross-examination, PW-3 has stated that the accused and his wife Golapi used to engage in frequent quarrels after consuming liquor.

11. Smti. Tejema Boro is the aunt of the appellant. She has been examined as PW-4. In her examination-in-chief, this witness had claimed that she had seen the occurrence. However, in her cross-examination, PW-4 has clarified that she had not personally seen the incident. As such, the learned trial Court had also not treated her as an eye-witness to the occurrence. PW-4 had, however, stated that the incident happened on 22.12.2019 at about 4:00 p.m. when she was working in her residence. At that time she had seen a quarrel between the accused and the victim in the courtyard.

12. PW-5 Smti. Ambari Boro is the niece of the appellant. She had also deposed that the incident took place on 22.12.2019 at about 4:00 p.m. At that time she was working in her residence and heard a quarrel between the accused and his wife. Initially, she did not pay much attention to the same as it was a regular affair. However, on hearing the cry of Tejema (PW-4) she had noticed that Golapi was lying with injuries in her courtyard. After sometime, the locals gathered there. Boloram was sitting in his courtyard. The Gaonburah and the VDP Secretary also arrived there. Police also came. This witness had further deposed that Golapi was the second wife of the accused.

13. PW-6 Sadhan Boro is related to the appellant, who is his cousin. PW-6 has simply deposed that on the date of the incident, on coming to know that Boloram

had assaulted his wife, he went to the house of the appellant and saw that his wife Golapi was lying dead in the courtyard. Police was also present.

14. PW-7 Dr. Arun Kumar Nath was working as the SDM & HO in the Morigaon Civil Hospital on 23.12.2019 when the dead body of Golapi Boro was brought there for post-mortem examination. According to the doctor, performing the post-mortem examination following wounds were found in the dead body :

“Wounds position and character :

Lacerated cut injury on occipital region size 3" x 2" x 1" was present. Fracture skull was present at occipital region.

Bruise position, size and nature : Cut injury size 6" x 2" x 1" on left temporo-parietal region. Sign of recent bleeding was seen.

Mark of ligature on neck dissection etc.”

15. PW-7 has proved the post-mortem report Ext-4 by identifying his signature. The doctor (PW-7) has opined that the exact cause of death was due to shock and hemorrhage due to major organ injury (head injury) and the death was instantaneous.

16. PW-8 Sri Jasowanta Nath, Sub Inspector of Police (SI) was posted as the Officer-in-Charge of Bhuragaon Police Station on 22.12.2019 when the ejahar was received. He was examined as PW-8. This witnesss had conducted the investigation in connection with Bhuragaon P.S. Case NO.181/2019 and submitted charge-sheet. PW-8 has deposed as to the steps taken by him soon after receipt of the information about the incident as well as the ejahar. The I.O. (PW-8) has stated that on receiving the information about the incident he had made a G.D. Entry vide Bhuragaon P.S.

G.D. Entry No.535 dated 22.12.2019 and proceeded to the place of occurrence to investigate into the matter. At around 4:25 p.m. on 22.12.2019, he had reached the place of occurrence, which is the residence of accused Boloram Boro and saw the dead body of Golapi i.e. the wife of the accused lying there. The dead body was identified by the locals present there. The accused Boloram was found to have been apprehended by the local people in his courtyard. PW-8 has further deposed that he had recorded the statements of the accused and the other witnesses whereby the accused had confessed before him that due to some quarrel, he had hit his wife with a bamboo piece on her head. The I.O. has further stated that the accused had furnished the necessary information leading to the recovery of the bamboo piece lying in the back side of the courtyard which he had seized. PW-8 has exhibited the relevant portion of the discovery statement of the accused leading to recovery of the bamboo piece which was seized by seizure-list Ext-3. The I.O. has also confirmed that Mat. Ext-1 was the seized bamboo piece. PW-8 has deposed that he had conducted the inquest on the dead body and Ext-2 is the said inquest report. PW-8 has further stated that on completion of investigation he had submitted charge-sheet against the accused appellant under Section 302 of the IPC. The I.O. has proved the charge-sheet Ext-8 as well as the extract of the G.D. Entry No.535 dated 22.12.2019 as Ext-9.

17. During his cross-examination, PW-8 has stated that he had visited the place of occurrence twice and recorded the statement of Dilip Boro. He has further stated that he got the information about the incident from Dehiram Boro (PW-2) over phone. PW-8 has further stated in his cross-examination that in the inquest report he has

mentioned about one injury as visible on the left side of the head of the deceased. The I.O. has also confirmed that witness Tejema Boro (PW-4) did not state before him that during quarrel she had seen the accused physically assaulting his wife Golapi by a bamboo piece.

18. From the examination of the statement of the accused/appellant recorded under Section 313 Cr.P.C. we find that although the accused had denied the incriminating circumstances put to him by the prosecution side including the fact that there was a quarrel between himself and his wife, yet, in reply to the Question No.20 he has admitted that police took him away upon arrival at his house and he was sitting in his courtyard. In reply to Question No.43 the accused has admitted that there was a quarrel between him and his wife on the date of the incident but he had denied of having any knowledge as to how his wife had died. The appellant/accused has also denied of any confession made by him before the police.

19. The evidence of PWs-1 and 2 regarding their arrival at the place of occurrence, the date and time of the incident and the information furnished to the police as well as the extrajudicial confession of the accused/appellant finds corroboration from the version of one another. From the evidence brought on record by the prosecution side it is not only established that the incident took place on 22.12.2019 in between 3 to 4 p.m. in the afternoon whereafter, the deceased was found lying dead in the courtyard of the house of the appellant with grievous injuries on her head, but it has also been established that the appellant was present in his

house and was sitting in the courtyard when the incident took place. The medical evidence brought on record leaves no room for doubt that the deceased had died a homicidal death due to the grievous injuries sustained on her head. The weapon used in assaulting the deceased i.e. the bamboo stick was seized by the I.O. vide Ext-3 and the seizure-witnesses viz., PWs-2 and 3 have also proved the said fact. There is no serious dispute as regards the recovery of the bamboo stick (Mat. Ext-1) by the I.O. on being led by the accused inasmuch as the defence side has not even questioned the validity of the disclosure statement Ext-5. Apart from the above, evidence of PWs-1 and 2 clearly goes to show that there is extrajudicial confession of the appellant of having committed the murder of his wife Golapi by hitting her on the head with a bamboo stick. Such extrajudicial confession was evidently made before the PW-1, Village Headman and PW-2, VDP Secretary before the arrival of the police and therefore, would be admissible in evidence in the eyes of law.

20. Although extra-judicial confession is considered as a weak piece of evidence, yet, law is settled that the same can be relied upon if there are other corroborating evidence available on record to establish the charge. From the sum total of the evidence available on record and the extrajudicial confession of the appellant, we are of the view that the prosecution has succeeded in establishing each link in the chain of circumstances so as to prove beyond reasonable doubt that it was none other than the accused/appellant who is responsible for the homicidal death of deceased Golapi Boro.

21. Having held as above, we now proceed to examine the argument of the

learned Amicus Curiae to the effect that there was no intention on the part of the appellant to commit the murder of his wife and therefore, it is a fit case for conviction of the sentence of the appellant under Section 304 Part-II of the IPC.

22. As has been noted herein above, there is sufficient evidence on record to show that an altercation took place between the appellant and his wife before the incident. The said fact has clearly emerged from the evidence of the prosecution witnesses i.e. PW-4 and PW-5. The weapon used in this case is a bamboo lathi. Although the post-mortem report has mentioned about two injuries on the head of the deceased, yet, in view of the evidence of the I.O. and the contents of the inquest report wherein, it was mentioned that only one injury was visible, it cannot be ruled out that the second injury on the back side of the head of the deceased was caused due to the falling down on the floor after being hit with the bamboo stick. In other words, the possibility that it was a case of single blow, in our opinion, cannot be entirely ruled out. Likewise, it cannot also be ruled out that due to the altercation with his wife and having been in an inebriated state, the appellant had acted in a heat of passion and whilst being deprived of the power of self-control due to the grave and sudden provocation thus causing the death of the victim. There is nothing on record even to remotely suggest any pre-meditation on the part of the appellant in causing the death of the victim. Situated thus, we are of the unhesitant opinion that the present case would come within the ambit of Explanations 1 and 4 of Section 300 of the IPC. We are, therefore, of the view that although the appellant might have had the knowledge that the blow might cause death to the deceased but he did not have the intent to cause death to the victim.

23. For the reasons stated herein above, we set aside the conviction of the appellant under Section 302 of the IPC as well as the sentence of life imprisonment awarded to him by the learned court below and instead, convict him under Section 304 Part-II of the IPC. Consequently, the appellant is awarded Jail sentence of 10 years rigorous imprisonment. The jail sentence imposed by this Court shall, however, be adjusted against the period already undergone by the appellant in jail. The fine imposed by the learned Court below, however, remains unaltered.

The appeal stands partly allowed.

Before parting with the record, we put on record our appreciation for the valuable services rendered by Mr. N. K. Barua, learned Amicus Curiae and recommend that the Registry may make payment of notified remuneration to the learned Amicus Curiae as per the existing norms.

Send back the LCR.

JUDGE

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant