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

CRIMINAL APPEAL [Jail] no. 44/2022

-

Jogen Munda

……*Appellant*

-VERSUS-

The State of Assam

……..*Respondent*

Advocates :

Appellant : Mr. A. Kalita, Amicus Curiae

Respondent : Ms. B. Bhuyan, Addl. Public Prosecutor,
Ms. M. Chakraborty, Advocate

Date of Hearing and Judgment & Order : 12.08.2024

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

JUDGMENT & ORDER [ORAL]

[Manish Choudhury, J.]

The present criminal appeal from Jail under Section 383, Code of Criminal Procedure [CrPC], 1973 ['CrPC' and/or 'Code'] is directed against a Judgment and Order dated 23.02.2022 passed by the Court of learned Sessions Judge, Sonitpur at Tezpur in Sessions Case no. 23 of 2018. In the trial of Sessions Case no. 23 of 2018, the accused-appellant faced a charge of patricide and after conclusion of the trial, the Court of learned Sessions Judge, Sonitpur at Tezpur ['the trial court', for short] finding him guilty for the offence of murder under Section 300, Indian Penal Code [IPC], has sentenced him under Section 302, IPC to undergo rigorous imprisonment for life and to pay a fine of Rs. 1,000/-, in default of payment of fine, to undergo simple imprisonment for another 3 [three] months. The learned trial court has observed that the period of detention, if any, already undergone by the accused during the course of investigation, enquiry or trial, shall be set off against the terms of imprisonment as per the provisions of Section 428, CrPC.

2. The investigation was set into motion on institution of a First Information Report [FIR] by one Abdul Hasim [P.W.4] as the informant, before the Officer In-Charge, Dhekiajuli Polilce Station on 12.04.2016. In the FIR, the informant stated that at around 06-30 p.m. on 11.04.2016, his fellow villager, Chanika Munda [the deceased] was assaulted to death by his own son, Jogen Munda [the accused]. On receipt of the FIR [Ext.-3], Officer In-Charge, Dhekiajuli Police Station registered the FIR as Dhekiajuli Police Station Case no. 206/2016 for the offence under Section 302, IPC.

3. After registration of the case, the investigation was entrusted to one Chandra Kanta Bhuyan [P.W.9], a Sub-Inspector of Police attached to Dhekiajuli Police Station. On being so entrusted, the I.O. [P.W.9] visited the place of occurrence [P.O.], that is, the house of the deceased and the accused situate at Village – Palashbasti. On going there, the I.O. [P.W.9] found the deadbody of Chanika Munda lying there which was identified by one Bhola Tanti. At the place of occurrence [P.O.], the I.O. found one siprang and the said siprang was seized vide a Seizure List, Ext.-1 in presence of witnesses including Thuma Orang [P.W.-3] and Fajar Ali Ahmed [P.W.5]. The I.O. [P.W.9] also held the inquest proceeding on the deadbody of the deceased at the P.O. by Jayanta Sarkar [P.W.10], Circle Officer, Dhekiajuli Circle. P.W.10, that is, the Circle Officer, Dhekiajuli Circle after completing the inquest on the deadbody of the deceased, recorded his findings in an Inquest Report [Ext.-2]. After completion of the inquest proceeding, the deadbody was forwarded to Kanaklata Civil Hospital, Tezpur for post-mortem examination on 12.04.2016 itself. The post-mortem on the deadbody of the deceased was performed at Kanaklata Civil Hospital, Tezpur at around 03-00 p.m. on 12.04.2016 by Dr. Ranjan Kumar Mahanta [P.W.8], who was serving as the Medical & Health Officer - I in the Hospital on 12.04.2016. The Autopsy Doctor [P.W.8] thereafter, submitted a Post-Mortem Examination [PME] Report [Ext.-4] recording his findings therein. The I.O. [P.W.10] had, in the meantime, prepared a Sketch-Map of the P.O. [Ext.-5] and recorded statements of the witnesses available at the P.O.

4. As the I.O. [P.W.9] did not find the accused in his house, the I.O. made searches for him [the accused]. On receiving an information that the accused was hiding himself in the house of Thuma Orang [P.W.3], the I.O. [P.W.9] had arrested the accused from the house of P.W.3 and forwarded the accused before the jurisdictional Magistrate.

5. After collecting the PME Report [Ext.-4] and completing the remaining part of the investigation of the case, Dhekiajuli Police Station Case no. 206/2016 [corresponding G.R. Case no. 1068/2016], the I.O. submitted a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 124/2016 on 26.04.2016 finding a prima facie case well established for the offence under Section 302, IPC against the accused. In the Charge-Sheet [Ext.-6], the I.O. observed that it was revealed from the statements of the witnesses that at around 05-30 p.m. on 11.04.2016, when the accused saw his father was touching the private parts of his own daughter-in-law [i.e. the wife of the accused], the accused assaulted his father on his chest and back with the handle of a siprang that was lying nearby and the assault resulted into the death of the father of the accused.

6. After submission of the charge-sheet, the Court of learned Judicial Magistrate, First Class, Tezpur issued summons to the accused for his appearance as the accused was, in the meantime, allowed to go on bail. On receipt of the summons, the accused appeared before the Court of learned Judicial Magistrate, First Class, Tezpur on 01.12.2018. On his such appearance, the accused was furnished with the copies of the case in compliance of the procedure laid down in Section 207, CrPC. As the offence under Section 302, IPC is exclusively triable by the Court of Sessions, the Court of learned Judicial Magistrate, First Class, Tezpur by an Order of Commitment dated 01.02.2018, committed the case records of G.R. Case 1068/2016 Court of Sessions, Sonitpur ['the trial court', for short]. The accused was directed to appear before the learned trial court on 19.02.2018. The learned Public Prosecutor was notified accordingly.

7. On receipt of the case records of G.R. Case no. 1068/2016 pursuant the Order of Commitment dated 01.02.2018, the learned trial court registered the case as Sessions Case no. 23 of 2018. After appearance of the accused, the case was opened by the learned Public Prosecutor before the trial court. After hearing the learned Public Prosecutor and the learned defence counsel; and on perusal of the materials on record; the trial court, on 03.04.2018, framed the following charge :-

> That, you, on 11.04.2016 at about 06-30 p.m. at Polashbosti Pothar under Dhekiajuli Police Station, committed murder of Sainaka Munda by means of a lathi and thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance.

8. When the charge was read over and explained to the accused, the accused pleaded not guilty and claimed to be tried. During the course of the trial, the prosecution side examined ten nos. of witnesses and exhibited five nos. of documents in order to bring home the charge against the accused. The prosecution witnesses examined were – [i] P.W.1 : Deben Karmakar; [ii] P.W.2 : Bhola Tanti; [iii] P.W.3 : Thuma Orang; [iv] P.W.4 : Abdul Hasim; [v] P.W.5 : Fajar Ali Ahmed; [vi] P.W.6 : Biren Munda; [vii] P.W.7 : Parbati Munda; [viii] P.W.8 : Dr. Ranjan Kumar Mahanta; [ix] P.W.9 : Chandra Kanta Bhuyan; and [x] P.W.10 : Jayanta Sarkar; and the documents exhibited during the trial were – [i] Ext.-1 : Seizure List; [ii] Ext.-2 : Inquest Report; [iii] Ext.-3 : FIR; [iv] Ext.-4 : Post-Mortem Examination [PME] Report; [v] Ext.-5 : Sketch Map of the P.O.; and [vi] Ext.-6 : Charge-Sheet.

9. After closure of the prosecution evidence, the accused was examined under Section 313, CrPC giving him the opportunity to explain the circumstances which had appeared against him in the testimonies of the prosecution witnesses. The plea of the accused was of denial. When the accused was asked as to whether he would adduce any evidence in support of his defence, the accused declined to adduce any defence evidence. After hearing the learned counsel for the parties and after evaluation of the evidence/materials on record, the learned trial court, on 23.02.2022, delivered the Judgment and Order recording the finding of guilt against the accused for committing the offence of murder of his father. The accused was heard on the point of sentence under Section 235[2], CrPC and thereafter, he has been sentenced in the manner, indicated above.

10. We have heard Mr. A. Kalita, learned Amicus Curiae for the accused-appellant and Ms. B. Bhuyan, learned Senior Counsel & Additional Public Prosecutor assisted by Ms. M. Chakraborty, learned counsel for the respondent State.

11. Mr. Kalita, learned Amicus Curiae appearing for the accused-appellant has submitted that other than P.W.7 who is the daughter-in-law of the deceased and the wife of the accused, the testimonies of the other witnesses are not to be accepted as regards the alleged incident of assault. He has contended that the prosecution witnesses, P.W.1, P.W.2 and P.W.3 were only witnesses to the seizure and to the inquest proceeding. The other part of the testimonies of these witnesses cannot be accepted as they did not see the incident. In so far as the prosecution witnesses, P.W.4 and P.W.5 are concerned, he has submitted that the defence was successful to establish that their testimonies are not trustworthy. It is his further contention that the prosecution case was solely based on the testimonies of P.W.7, that is, the daughter-in-law of the deceased and the wife of the accused and such testimony is not to be accepted due to lack of corroboration from the other evidence. Mr. Kalita has alternatively submitted that even if the case is found to be one of murder under Section 300, IPC the materials emerging from the case records clearly pointed towards an act on the part of the deceased towards his daughter-in-law which was unbecoming on the part of an elderly person like him. With such submission, the learned Amicus Curiae has

submitted that in such situation, the case would definitely come within the Exception I of Section 300, IPC.

12. Ms. Bhuyan, learned Additional Public Prosecutor for the State has supported the Judgment and Order of conviction and sentence passed by the learned trial court. Ms. Bhuyan has submitted that the prosecution has been able to prove the case beyond reasonable doubt. Ms. Bhuyan has further pointed out that the testimony of the prosecution witness, P.W.7 could not be shaken and discredited by the defence. Since the testimony of P.W.7 is found reliable and credible as regards the incident of assault, the conviction based on the testimony of the said witness is clearly permissible under the law. It has been fairly submitted that even if the submission of the learned Amicus Curiae is accepted, the case would, at best, fall under Exception I of Section 304, IPC.

13. We have given due consideration to the submissions of the learned counsel for the parties. We have also perused the evidence/materials on record including the testimonies of the prosecution witnesses and the documentary evidence, available in the case records of Sessions Case no. 23 of 2018, in original.

14. Before any discussion on the ocular testimonies of the witnesses, it appears apt to refer to the medical evidence, which are in the forms of the testimony of the Autopsy Doctor, P.W.8; and the PME Report [Ext.-4]. The Inquest Report [Ext.-2] was prepared prior to sending the deadbody for post-mortem examination.

15. The inquest proceeding on the deadbody of the deceased was conducted by Chandra Kanta Bhuyan [P.W.10], Circle Officer, Dhekiajuli Circle at the P.O. on 12.04.2016. In his testimony, P.W.10 deposed that when he conducted the inquest proceeding, he noticed injury marks on the back of the deceased. P.W.10 exhibited the Inquest Report as Ext.-2 with his signature therein as Ext.-2[4]. In the Inquest Report [Ext.-2], it was reported that the approximate age of the deceased was 62 years and there was injury mark on the back side of his person.

16. Dr. Ranjan Kumar Mahanta [P.W.8] was, on 12.04.2016, serving as Medical & Health Officer – I at Kanaklata Civil Hospital, Tezpur. In his testimony, P.W.8 deposed that he performed the post-mortem examination on the deadbody of the deceased at about 03-00 p.m. on 12.04.2016 in reference to Dhekiajuli Police Station Case no. 206/2016 after the deadbody was identified by UBC, Tutu Khan and Thuma Orang [P.W.3]. In his testimony, P.W.8 mentioned about the injuries found on the person of the deceased. P.W.8 stated that there was abrasion over the right side of the chest and right leg. There were also fractures of right clavicle and ribs, 8^{th}-10^{th} of the right side of the chest. P.W.8 further stated that the injuries were found to be ante-mortem in nature. On the basis of such findings, P.W.8 opined that the cause of death was due to shock and blunt chest injury sustained by the deceased. P.W.8 further testified that the injury described in the PME Report was sufficient to cause death of a person. P.W.8 exhibited the PME Report as Ext.-4 and his signature and the signature of Joint Director of Health Services, Sonitpur, Tezpur appearing therein as Ext.-4[1] and Ext.-4[2]

respectively. When cross-examined, P.W.8 mentioned that the injury type sustained by the deceased would occur if a person falls on a blunt surface.

17. In the PME Report [Ext.-4], following findings, were recorded :-

I – EXTERNAL APPEARANCE

1. Condition of subject stout emaciated, decomposed, etc. :

A male deadbody of 62 years old. Rigor mortis was present.

2. Wounds – position and character :

Abrasion over right side of chest and right leg.

Right clavicle.

Ribs [8^{th} – 10^{th}] right chest.

Haematoma seen both lungs.

3. * * * * * * * *

4. * * * * * * * *

II – CRANIUM AND SPINAL CANAL

1. Scalp, Skull, Vertebrae : Healthy
2. Membrane : Healthy
3. Brain and ribs and cartilages : Abrasion on Right chest wall.

III. THORAX

1. Walis ribs and cartilages : Abrasion on Rights chest wall.
2. Pleurae : Congested
3. Laryax and trachea : Congested
4. Right lung : Haematoma present
5. Left lung : Haematoma present
6. Pericardium : Healthy
7. Heart : Healthy
8. Vessels : Healthy

IV – ABDOMEN

1. Walls : Healthy
2. Peritonoum : Congested

3. Mouth, pharyanx, oesophagus : Congested
4. Stomach and its contents : Distended
5. Small intestine and its contents : Distended
6. Large intestine and its contents : Distended
7. Liver : Healthy
8. Spleen : Healthy
9. Kidneys : Healthy
10. Bladder : Healthy
11. Organs of generation external and internal : Healthy

V. MUSCLES, BONES AND JOINTS

1. * * * * * * * *
2. * * * * * * * *
3. Fracture : # Rt clavicle
Rib 8^{th} – 10^{th} right side
4. * * * * * * * *

MORE DETAILED DESCRIPTION OF INJURY OR DISEASE

Ante-mortem injuries.

OPINION OF ASSISTANT SURGEON AS TO CAUSE OF DEATH

SUB – ASSISTANT SURGEON

In my opinion the cause of death was due to shock as a result of blunt chest injury sustained by the deceased.

Ext.-4[1]
Sd/ - Illegible
Sessions Judge
Sonitpur, Tezpur
09.07.2018

Sd/ - Illegible
Dr. R.K. Mahanta
M&HO - I
KCH Tezpur
Medical & Health Officer - I
Kanaklata Civil Hospital
Sonitpur, Tezpur
[Dr. Ranjan Kr. Mahanta]

The 12th day of April, 2016 ASSISTANT SURGEON OF
SUB-ASSISTANT SURGEON

REMARKS BY CIVIL SURGEON

Ext.-4[2]
Sd/ - Illegible
Sessions Judge
Sonitpur, Tezpur
09.07.2018

Sd/ - Illegible
18.04.2016
Joint Director of Health Services
Sonitpur, Tezpur

18. We would advert to the medical evidence again in the later part of this judgment.

19. P.W.1, Deben Karmakar, an inhabitant of Village – Palashbasti, was a witness to the Seizure List, Ext.-1 whereby the I.O. [P.W.9] had seized one siprang along with handle. P.W.1 stated that he subscribed his signature in Ext.-1 as Ext.-1[1]. P.W.1 further stated that he heard about the incident only on the next day and he heard from the villagers that the accused had murdered his father but he could not recall the name of the villagers from whom he heard about the incident. In his cross-examination, P.W.1 testified that he knew that the deceased used to consume liquor heavily and after consuming liquor, he used to fall hither and thither. P.W.1 admitted that he did not witness the incident.

20. Like P.W.1, P.W.2 – Bhola Tanti is also an inhabitant of Village - Palashbasti where the deceased and the accused used to reside. P.W.2 deposed to the effect that he came to know about the incident only in the morning on the following day and he heard that the accused assaulted his father with a siprang and as a result, the deceased succumbed to the injuries. P.W.2 further stated that he came to know later on that at around 05-30 p.m. on 11.04.2016, the accused assaulted the deceased with the siprang on his back after witnessing the deceased touching the private parts of his [accused's] wife. In cross-examination, P.W.2 stated that he did not witness the incident.

21. P.W.3, Thuma Orang is another resident of Village – Palashbasti. In his testimony, P.W.3 stated that he heard that the accused had killed his father. P.W.3 further stated that one siprang which was seized vide Seizure List, Ext.-1 in his presence by the I.O. [P.W.9], he gave his signature as Ext.-1[2]. P.W.3 further stated that in the Inquest Report [Ext.-2], he gave his signature and he identified his signature therein as Ext.-2[1]. In his cross-examination, P.W.3 like P.W.1, deposed that the deceased used to consume liquor heavily and after consuming liquor he used to fall hither and thither.

22. We find that the prosecution witnesses, P.W.1, P.W.2 and P.W.3, did not depose anything as to how and when the incident of assault had occurred. They came to the P.O. only after the incident was over. These three prosecution witnesses had deposed that they had learnt from others that the accused had assaulted the deceased with a siprang. Such parts of the testimonies of P.W.1, P.W.2 and P.W.3 are not of any assistance to the case of the prosecution as the same would only be hearsay evidence. That would not, however, affect the testimonies of these witnesses as regards seizure of the siprang from the P.O. and holding of the inquest proceeding on the deadbody of the deceased.

23. At this stage, it appears necessary to dilate about the manner how a contradiction can be brought on record. The statements recorded under Section 161, CrPC by the I.O. [P.W.9] during the investigation are not substantive pieces of evidence. Section 162, CrPC bars use of the statement of witness recorded by Police except for limited purpose of contradiction of such witness. The statement made by witness before the Police under Section 161, CrPC can be used only for the purpose of contradicting such witness on what he has stated in the trial as laid down in proviso to Section 162[1], CrPC. Such Police statement can be used primarily for the limited purpose : [i] of contradicting such witness by an accused under Section 145 of the Evidence Act; [ii] the contradiction of such witness also by the prosecution but with the leave of the Court; and [iii] the re-examination of the witness, if necessary. As per Section 145 of the Evidence Act, a witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. As per sub-section [3] of Section 155 of the Evidence Act, the credit of a witness may be impeached by the adverse party by proof of former statement which is inconsistent with any part of his evidence which is liable to be contradicted. It has provided in the first limb of Section 145 that a witness may be cross-examined as to the previous statement made by him without such writing being shown to him. But the second limb provides that if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. There is, thus, a distinction between the two limbs. The first limb does not envisage impeaching of the credit of a witness and it only enables the adverse party to cross-examine the witness with reference to the previous statement made by him. The adverse party may at that stage succeed in eliciting materials to his benefit through such cross-examination even without resorting to the procedure laid down in the second limb. But if the witness disowns having made any statement which is inconsistent with the present stand, his testimony in court on that score would not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed in the second limb of Section 145.

24. The Hon'ble Supreme Court of India in **V.K. Mishra and another vs. State of Uttarakhand**

and another, reported in [**2015] 9 SCC 588**, has succinctly explained the manner in which the contradiction shall be brought on record. For ready reference, relevant excerpts from **V.K. Mishra** [supra] extracted hereinbelow :-

> **19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction.**

25. If the defence has been able to bring the contradiction on record in respect of a witness in the manner indicated above, then the credit of such evidence stands impeached with that part of his evidence given before the Court. When we turn to the testimonies of the prosecution witnesses, P.W.4 and P.W.5, we find that other than a part of their testimonies given in examination-in-chief relating to their witnessing to the Inquest, Seizure List and filing of the FIR by P.W.4, a major part of the testimonies of both these witnesses were marked by the defence and thereafter, they were confronted. On being so confronted, both P.W.4 and P.W.5 during their cross-

examination, denied that they did not make such statements, marked by the defence, before Police. The defence had thereafter, confronted the I.O. [P.W.9] when he was examined as [P.W.9] by drawing his attention to such statements marked for the purpose of contradiction. When the I.O. [P.W.9] was so confronted, he stated that the prosecution witnesses, P.W.4 and P.W.5 did not state before him in the manner shown marked. As the defence was able to bring the contradictions in support of a major part of the testimonies of P.W.4 and P.W.5, the credit of these two witnesses stood impeached to that extent.

26. The prosecution case has mainly hinged on the evidence of P.W.7, Parbati Munda, the daughter-in-law of the deceased and the wife of the accused. In her examination-in-chief, P.W.7 deposing on the incident, had stated that the occurrence took place at about 03-00/3-40 p.m. On the relevant day at that time when she was sleeping in the house, her father-in-law, that is, the deceased entered into the house and drew her clothes. The said act of her father-in-law was witnessed by her husband [the accused]. Witnessing such act on the part of the deceased, her husband [the accused] by means of a siprang, assaulted his father [the deceased] and inflicted injury on the person of his father [the deceased]. P.W.7 deposed that as a result of the injury, her father-in-law died. Then she went to her parents' house for some time. P.W.7 further stated that when she returned after some time from her parents' house, she saw the deadbody of her father-in-law. P.W.7 further stated that during investigation, Police seized the siprang by which the accused, that is, her husband assaulted the deceased, that is, her father-in-law. P.W.7 further stated that the siprang was produced by her. Later on, Abdul Hasim filed the FIR in the Police Station. During her cross-examination, P.W.7 revealed that at the relevant time of the incident, both her husband and her father-in-law were present in the house. P.W.7 further stated that when her father-in-law drew her clothes, she out of fear fled away from the house and she was not aware as to what happened in between her husband and her father-in-law. P.W.7 also stated that her father-in-law had consumed excessive liquor on the date of the incident and claimed ignorance about sustaining the injury by her father-in-law on falling due to intoxication.

27. P.W.6, Biren Munda who was nephew of the deceased and also an inhabitant of the Village - Palashbasti, deposed that at about 03-00/04-00 p.m. on the date of the incident, he found his uncle [Bordeuta], that is, the deceased lying on the road. Finding his uncle [Bordeuta] in such condition, he [P.W.6] stated to have taken his uncle [Bordeuta] to his [P.W.6's] house first. P.W.6 further stated that thereafter, he [P.W.6] took his uncle [Bordeuta] to the house of his uncle [Bordeuta]. It was in the evening on that day, his uncle [Bordeuta] died in the house of Jogen Munda, that is, the accused. In his testimony, P.W.6 stated that he came to learn that a quarrel took place between his uncle [Bordeuta] and the accused, Jogen Munda. P.W.6 was crossed-examined by the prosecution after taking permission from the court to declare him [P.W.6] as hostile. When P.W.6 was cross-examined by the prosecution, P.W.6 denied that he stated to police that 'due to assault of Jogen Munda, his father Sonika Munda died'. When the I.O. [P.W.9] was thereafter, confronted with the said marked part during his

deposition-in-chief, the I.O. [P.W.9] stated that P.W.6 stated before him that 'due to assault of Jogen Munda his father Sonika Munda died'. In his cross-examination be defence, P.W.6 stated that his uncle [Bordeuta] Sonika Munda was about 85 years of age and he used to consume excessive liquor. P.W.6 denied having stated before the I.O. that Jogen Munda [the accused] assaulted Sonika Munda [the deceased], when he put the suggestion by the defence.

28. On evaluation of the evidence of the prosecution witnesses, P.W.6 and P.W.7, we find that there are no inconsistencies in their evidence as regards the sequence of events leading to the death of the deceased, leaving aside the minor discrepancy as regards the exact time of occurrence, which discrepancy, in our considered view, did not make any dent to the core of the prosecution case. In his testimony, P.W.6 stated that at about 03-00/04-00 p.m., he found his uncle [Bordeuta], Sonika Munda [the deceased] on the road in lying condition. Finding his uncle [Bordeuta], Sonika Munda [the deceased] in such condition, the deceased was taken to the house of P.W.6 first and thereafter, to the house of the deceased where his son [the accused] and his daughter-in-law [P.W.7] also used to reside. When the deceased was taken to the house of Sonika Munda [the deceased], he was in intoxicated condition after consuming excessive liquor. From the testimony of P.W.7, it has emerged that the deceased had committed an act of transgression by entering into the room where his daughter-in-law, P.W.7 was sleeping at that time and after entering the room, he drew her clothes. The said act of his father [the deceased] was witnessed by the accused, who was also present in the house at that point of time, as testified by his wife [P.W.7]. On witnessing such act on the part of his [the accused] father on his [the deceased] daughter-in-law, the accused who is the son of the deceased, assaulted his father [the deceased] by means of a siprang and as a result of the assault, the deceased sustained injury. As testified by P.W.7, the deceased succumbed to such injury caused by the accused by the siprang. When Police visited the P.O., that is, the house of the accused and the deceased, it was P.W.7 who handed over the siprang to the I.O. [P.W.9], who, in turn, seized the said siprang vide the Seizure List, Ext.-1. We find that when the I.O. [P.W.9] submitted the charge-sheet, it was indicated that the accused assaulted his father on his chest and back with the handle of a siprang that was lying nearby.

29. In so far as the prosecution witness, P.W.6 is concerned, the prosecution took permission from the court to confront him with a limited part of his previous statement. Such examination of P.W.6 qua the limited part of his previous statement does not make him an unreliable witness to exclude his entire evidence from consideration altogether. The evidence of a witness who was cross-examined to a limited extent by the party, who called him as a witness, can be relied upon to the extent to which he supports the prosecution version and it remains admissible in the trial and there is no legal bar to base conviction of the accused upon his such testimony, if corroborated by other reliable and reliance substantive evidence.

30. As per Section 134 of the Evidence Act, no particular number of witnesses shall in any case be required for the proof of any fact. The law is settled that reliance can be based on the solitary statement of a witness if the court comes to a conclusion that the said statement is true and correct version of the case of the prosecution. Thus, conviction can be based on the testimony of a solitary eye-witness but in order to base conviction, his or her presence at the place of occurrence has to be natural and his or her testimony should be strong, reliable, credible and free from any blemish.

31. The P.O. was the house of the deceased and the accused where the prosecution witness, P.W.7, that is, the daughter-in-law of the deceased and the wife of the accused also used to reside. Thus, the presence of P.W.7 at the P.O. was quite natural in the house during the day-time when the incident of assault had occurred. When the testimony of P.W.7 is read together with the testimony of the Autopsy Doctor, P.W.8 along with the PME Report [Ext.-4], there are no apparent inconsistency. As per the testimony of P.W.7, the deceased was assaulted by the accused by means of a siprang [an instrument made of iron for digging earth]. As per the Seizure List [Ext.-1], a siprang with a bamboo handle of 3 feet long was seized by the I.O. [P.W.9] at around 09-00 a.m. on 12.04.2016 at the P.O. and the said siprang was produced before the I.O. by P.W.7. The seizure was made in presence of the witnesses, P.W.1, P.W.3 and P.W.5. It is not the case of the defence that the prosecution witness, P.W.7, that is, the wife of the accused was inimically disposed towards the accused nor it is the case of the prosecution that the prosecution witnesses, P.W.1, P.W.3 and P.W.5 were adversely disposed towards the accused having any prior enmity. The Autopsy Doctor, P.W.8 had found abrasions over right chest and fracture of right clavicle and ribs 8^{th}-10^{th} of the right side of the chest. P.W.8 had opined that the cause of death was due to shock and blunt chest injury sustained by the deceased.

32. The learned trial court who had the first-hand opportunity to form the opinion about genuinity of evidence given by P.W.7 and to examine her demeanour, had found P.W.7 as a reliable and trustworthy witness. It is trite law that the appellate court which does not have this benefit, has to attach due weight to the appreciation of the evidence by the learned trial court. It is also settled that unless there are glaring and significant reasons, it is not proper on the part of the appellate court to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details if the core of the prosecution story has not been dented in any manner. Having regard to the facts and circumstances obtaining in the case, as discussed hereinabove, we are of the unhesitant view that the prosecution has been able to lead cogent and credible evidence to establish that on the date of the incident, the deceased was assaulted by the accused by way of a siprang and the deceased died at the P.O. either instantaneously or almost instantaneously after the assault.

33. The question which has now arisen for consideration is whether the deceased met his death due to an act

of murder or for an act of culpable homicide not amounting to murder.

34. The offence of culpable homicide is defined in Section 299 of the Indian Penal Code [IPC]. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Culpable homicide is the genus and the offence of murder its species, meaning thereby, all murders are culpable homicides but all culpable homicides are not murders. The offence of murder which is defined in Section 300, IPC, reads as under :-

> 300. Murder -
> Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or
>
> Secondly - If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or
>
> Thirdly - If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or
>
> Fourthly - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.
>
> Exception I - When culpable homicide is not murder-Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.
>
> The above exception is subject to the following provisos :-
>
> First - That the provocations not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly - That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.
Thirdly - That the provocations not given by anything done in the lawful exercise of the right of private defence.

Explanation - Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2 - Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3 - Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting or the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4 - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation - It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5 - Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

35. The Hon'ble Supreme Court in Thangaiya vs. State of Tamil Nadu, reported in [2005] 9 SCC 650, has pointed out the distinction between the above two sections, that is, Section 299 and Section 300 of the Penal Code in the following manner :-

9. This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of the IPC culpable homicide is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

10. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the Courts. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300.....

36. In **State of Andhra Pradesh vs. Rayavarapu Punnayya and another,** reported in **[1976] 4 SCC 382,** the Hon'ble Supreme Court has dilated on the aspect as to how a case of homicidal death is to be proceeded with to determine whether the homicidal death was one of culpable homicide amounting to murder or the homicidal death was culpable homicide not amounting to murder, after noticing the distinction between the provisions of Section 299 and Section 300 of the IPC in the following words :-

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 Section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated is Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code.

37. In **Virsa Singh vs. State of Punjab**, reported in **AIR 1958 SC 465**, a three-Judge Bench of the Hon'ble Supreme Court of India, speaking through Vivian Bose, J., explained the meaning and scope of clause [3] of Section 300, IPC. It has been observed therein that in considering whether the intention to inflict the injury found to have been inflicted, the enquiry necessarily proceed on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. The enquiry is to be broad-based and simple and based on commonsense. It has been observed that the prosecution must prove the following facts before it can bring the case under Section 300 'thirdly' : first, it must establish, quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved; and thirdly, it must be proved that there was not accidental or unintentional, or that some other kind of injury was intended. The Court had went on to observe as under :-

16. ....The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion....

38. In this connection, it is also apt to refer to Illustration [c] to Section 300, IPC which is in the following words :-

[c] A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A

is guilty of murder, although he may not have intended to cause Z's death.

39. Herein, the deceased was the father of the accused. From the evidence on record, it has emerged that the deceased was, atleast, aged about 62 years, as reflected in the Inquest Report [Ext.-2] and the PME Report [Ext.-4]. It has further emerged from the testimonies of the prosecution witnesses who knew the deceased, that the deceased was habituated to drink. A siprang [an instrument made of iron for digging earth] is a moderately heavy object, though not very sharp. From the Seizure List [Ext.-1], the siprang seized was about 3 feet long with a bamboo handle. The chest is considered to be a vital part on the body of a person. As per the medical evidence, the chest injury sustained by the deceased was sufficient to cause the death of a person. It is in presence of such overwhelming evidence, we are of the considered view that the death of the deceased was an act of murder falls within the scope and ambit of Clause 'thirdly' of Section 300, IPC.

40. The next issue for consideration is whether the case would come within one of the Exceptions to Section 300, IPC, more particularly, Exception I thereto, as urged by the learned Amicus Curiae for the appellant. Exception 1 is applicable when due to grave and sudden provocation, the offender, deprived of the power of self control, caused the death of a person who gave the provocation. The above exception is subject to the provisos, already quoted hereinabove. Interpreting Exception I to Section 300, IPC in **K.M. Nanavati vs. State of Maharashtra**, reported in **1962 Supp [1] SCR 567**, the Hon'ble Supreme Court has held that the condition which have to be satisfied for the exception to be invoked are : [a] the deceased must have given provocation to the accused; [b] the provocation must be grave; [c] the provocation must be sudden; [d] the offender, by the reason of the said provocation, should have been deprived of his power of self-control; [e] the offender should have killed the deceased during the continuance of the deprivation of power of self-control; and [f] the offender must have caused the death of the person who gave the provocation or the death of any other person by mistake of accident. For determining whether or not the provocation had temporarily deprived the offender from the power of self-control, the test to be applied is that of a reasonable man and not that of an unusually excitable and pugnacious individual. The question of loss of self-control is a question of fact and the act of provocation and loss of self-control must be actual and reasonable.

41. It has clearly emerged from the evidence on record, especially from the testimony of P.W.7 that prior to the incident of assault, the deceased had committed an indecent act of pulling the clothes of P.W.7, who was the daughter-in-law of the deceased. Such act was committed by the deceased when his daughter-in-law [P.W.7] was sleeping. At that point of time, the accused had seen the indecent act committed by his father on his own daughter-in-law. It can be easily presumed that witnessing such an unbecoming act of his father on his own daughter-in-law and his wife must have provoked the accused and the act of such pulling of clothes amounted to outraging the modesty of his wife and such provocation was sudden as well as grave. It is not difficult to

presume that such kind of grave and sudden provocation resulted into temporary deprivation of self-control on the part of the accused. The accused at that point of time, finding a siprang, a tool easily available in rural household, lying nearby, picked up the same and inflicted a blow on the person of the deceased. The accused being the son of the deceased was quite aware of the advanced age and physical condition of his father [the deceased] due to his daily habit of consuming liquor excessively. The blow given by the accused on the chest of the deceased had, thus, become fatal resulting in almost instantaneous death of the deceased at the place of occurrence itself. From the fact of instantaneous or almost instantaneous death of the deceased, the force with which the blow was given can be easily inferred.

42. Having considered these evidence/materials in its entirety, available on record, we are of the considered view that the act on the part of the accused is an act of culpable homicide of the second degree. In other words, the offence is culpable homicide not amounting to murder punishable under the first part of Section 304, IPC. The accused is about 36 years of age and apart from his wife, he has minor children. It has not emerged from the case records that the accused apart from being implicated in the present case, had any criminal antecedent. Thus, the case was one where sudden and grave provocation took place and the assault was by the accused being deprived of his power of self-control. The same would bring the offence within the scope and ambit of Exception I of Section 300, IPC and hence, under Section 304 Part-1 IPC as the accused had caused one bodily injury on the person of the deceased which, to his knowledge, was likely to cause the death of the deceased, who was his father. In such backdrop, we are of the considered view that a period of rigorous imprisonment of 8 [eight] years will meet ends of justice. The fine imposed by the learned trial court along with default stipulation is to be maintained.

43. Accordingly, this criminal appeal is partly allowed by converting the conviction of the accused-appellant from under Section 302, IPC to Section 304 Part-I, IPC and the sentence is altered from rigorous imprisonment for life to rigorous imprisonment for 8 [eight] years by maintaining the fine imposed upon the accused-appellant with the same default stipulation, as passed by the learned trial court. It is observed that the period of detention already undergone by the accused during the course of investigation, enquiry or trial, shall be set off in the terms of Section 428, CrPC.

44. We also reiterate the direction given by the learned trial court as regards award of adequate compensation to the family of the victim in terms of the provisions contained in Section 357A, CrPC and the extant Victim Compensation Scheme framed thereunder.

45. Before parting with the records, we wish to place our appreciation on record as regards the serves rendered by Mr. A. Kalita, learned Amicus Curiae appearing for the accused-appellant and direct the Registry to make

available to him just remuneration as per the notified fee structure applicable to the Amicus Curiae.

46. The records of the trial court are to be sent back forthwith.

JUDGE **JUDGE**

Comparing Assistant