

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE No 2
SONITPUR::TEZPUR

SESSION CASE NO. 217 of 2008
(under section 302 I.P.C)
(Arising out of G.R. Case No. 733/08)

State of Assam

-Vs-

Sri Ranjit Tanti

.... Accused.

Present
Ms. A. Ajitsaria, AJS,
Addl Sessions Judge-2, Sonitpur, Tezpur

For the State: Sri Khemraj Adhikary, Learned Addl Public Prosecutor

For the accused: Sri. T.C Khatri, Sr Advocate

Smt Moushumi Bhagowati, Advocate

Date of Evidence: 18.04.09, 03.11.09, 29.11.10, 18.01.11,
25.07.12, 19.5.2014

Date of Hearing : 17.2.2014, 26.5.2014

Date of Judgment: 31.5.2014

J U D G M E N T

1. The prosecution case, in brief, is that on 13.05.08, one Smti Hema Tanti filed an FIR before the Officer-in-Charge of Dhekiajuli Police Station stating, inter alia, that on 12.05.08 at about 4:00 PM her husband Ranjit Tanti, picked up a quarrel over various issues and killed her son, Mohan Tanti by striking him with the blunt of an axe. On the basis of the FIR police registered Dhekiajuli Police Station Case No. 147/08 under section 302 IPC. After due investigation, charge-sheet was submitted against the accused Sri Ranjit Tanti under the said section of law.

2. Upon production of the accused the relevant documents were furnished to the accused under Section 207 CrPC and as the offence was u/s 302 IPC, the case was committed to the Court of Sessions for trial.

3. After hearing both sides, and on perusal of the documents furnished u/s 173 of the Cr.P.C., formal charge u/s 302 IPC was framed, read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4. In support of the case the prosecution examined as many as 8 (eight) prosecution witnesses and defence examined none. The plea of defence is of total denial.

5. After closure of the prosecution evidence, the accused was examined u/s 313 of the Cr.P.C. wherein he denied the accusation levelled against him.

POINTS FOR DETERMINATION

Whether the accused on 12.5.2008 committed murder by intentionally causing death of Mohan Tanti ?

6. I have carefully examined the evidence on record and heard arguments of both sides.

DISCUSSION, DECISION and REASONS THEREOF

7. PW 1 Sri Gopendra Mohan Das, Medical Officer deposed that he conducted post mortem examination on the dead body of Mohan Tanti on 13.5.2008. On general examination, he found that rigour mortis was present. PW 1 stated that the wearings/clothes of the deceased were stained with blood and that the body looked extremely pale due to heavy blood loss. The following injuries were detected on the body of the deceased by PW 1:

(1) sharp cut injury of 3"x2" deep to bone size over right parietal region of scalp with fracture of right parietal bone, intracranial haemorrhage was seen over right cerebrum and expulsion of brain tissue were seen.

(2) sharp cut injury of 4"x2" deep to bone size over left parietal region of scalp with fracture of left parietal bone with expulsion of brain tissue.

PW 1 further stated that injuries were ante mortem in nature. In the opinion of PW 1, the cause of death was due to haemorrhagic shock sustained by the deceased as a result of grievous cut injury over scalp with intracranial haemorrhage.

PW 1 exhibited the post mortem report as Ext. 1. In cross examination PW 1 stated that the injuries, like the ones sustained by the deceased, could be caused by falling from a high place with great force.

8. PW 2, Debaru Gowala stated that about one and half years ago (deposition taken on 3.11.2009) he had gone to Guwahati with the Manager of the tea estate and when he arrived back at about 10:30 PM, he came to know that the accused had killed someone. In his cross examination he deposed that he did not know who killed whom.

9. PW 3, Smt. Hema Tanti, the informant and wife of the accused, deposed that the deceased Mohan was her nephew and that she did not know how Mohan died and who killed him. She deposed that on the date of death of Mohan she had gone for work early in the morning and on her return from work she received the news of Mohan's death and thereafter went to the police station. She further deposed that the police asked her whether she had seen the incident and when she replied in the negative, police sent her away. The said witness was declared hostile by the prosecution and was confronted with her previous statement. In the cross examination by the prosecution PW3 stated that she had not deposed before police *that 'on 12.05.08 at 4:00 PM the accused*

had some altercation with her son Mohan over some domestic issues; the accused hacked Mohan with an axe resulting in his death; thereafter the accused went to Dhekiajuli police station with the axe in hand; she went to police station to lodge the FIR; police seized the axe and she signed in the seizure list'.

In her cross examination by the defence she stated that Mohan was her nephew. She stated that on 12.05.08 she had gone for work and was not at home. She further stated that she did not know about any quarrel between the accused and the deceased and that her husband, the accused, too had gone to work. She further deposed that she did not know about the incident of Mohan being hit with an axe and that she had not filed any FIR before the police nor had the police interrogated her. PW 3 stated that she did not know why police had taken her signature on the seizure list. She further stated that she did not know as to how Mohan died.

10. PW 4, Sri Shankar Soban deposed that he knew that the deceased resided in the house of the accused. He stated that at the time of the incident, he was the VDP Secretary and Sardar of the Tea Estate. He stated that on the date of occurrence, police informed him over telephone that they were coming to the tea estate but though he was waiting for police on the road, the police did not recognise him and crossed him whereupon he returned to his house. On the next day, he went to the police station where he saw the dead body and went to the Kanaklata Civil Hospital for post mortem.

PW 4 too was declared hostile by the prosecution and after due permission, the prosecution, cross examined PW 4. In cross examination by the prosecution PW 4 denied having stated before the police to the effect that *'on 12.5.2008, the accused, a resident of the eastern line of the Tea Estate had picked up a quarrel with his son Mohan Tanti over some domestic issue and had struck him on the head with an axe, causing his death and that he accompanied the police when the dead body was taken to the police station.'* In cross examination by the defence he stated that he did

not know the deceased nor had he identified the dead body. He stated that he did not know whether the accused and the deceased were related to each other nor did he know how or why the deceased died. He further deposed that he did not know of any domestic dispute between the accused and the deceased.

11. PW-5, Sri Binoy Paul, VDP Secretary, Alisinga Village (deposition taken on 18.1.2011) stated that about two and a half years ago around 11:00- 12:00 during the day, he had gone to Dhekiajuli P.S. The accused person had come to the police station with an axe in his hand and said that one of his relatives had been causing extreme nuisance under the influence of liquor and so the accused had killed his relative.

In cross examination PW 5 stated that he did not personally know the accused and when he had visited the police station there were two-three other people apart from police personnel. He stated that he had not seen the dead body.

12. PW 6, Sri Rajesh Tanti deposed that about 2 years back (deposition taken on 18.1.11) while he was returning back from work at about 6:00 PM, he heard about the arrival of the police and he went to the house of the accused. Police brought out a dead body from the house and while taking the dead body away, the police obtained his signature on a paper. At this stage the prosecution declared PW 6 hostile and confronted PW 6 with his previous statement. In cross examination by the prosecution he denied that he had stated before the police that *'hearing from his co-villagers that the accused, who was his neighbour, had killed his adopted son, Mohan by striking him with an axe, he went to his house and found that the incident was true and that he was present at the time when the police held inquest on the dead body and that police had obtained his signature on the inquest report'*.

In cross examination by the defence, PW 6 stated that on the day of the incident, he had been at work and had not seen the incident. He stated that it was around 6-7 PM when he returned

from the garden and on his way back he had consumed country liquor. By the time he arrived, police had loaded the dead body in the vehicle. He further stated that he did not know from whose courtyard the dead body was recovered and that how the deceased had died.

13. PW 7, Sri Pabitra Tanti deposed that he neither knew the accused nor the deceased. At this stage the prosecution declared PW 7 hostile and after obtaining permission, the prosecution cross examined PW 7. In the cross examination by the prosecution, PW 7 declined that he had stated before the police that *'on 12.5.2008, he had come to know from others that their neighbour, the accused had killed his adopted son, Mohan by striking him with an axe and that he then went to the house of the accused and found the same to be true, after which the police held inquest on the dead body and he put his signature on the inquest report.*

In cross examination by the defence he stated that he did not know the accused and he had never gone to the house of the accused, nor had the police recorded his statement. He stated that he did not know who assaulted whom.

14. PW 8, Sri Mahendra Nath Bora, the investigating officer of the case stated that on 13.05.08, Smt. Hema Tanti submitted an FIR (Ext 3) which was registered as Dhekiajuli P.S Case No.147/2008 u/s 302. He stated that during investigation, he visited the place of occurrence, recovered the dead body of the deceased, Mohan in his residence at the East Line of the Tulip TE. He stated that he was accompanied by the Revenue Officer of Dhekiajuli Revenue Circle who conducted the inquest on the dead body of the deceased in his presence vide Ext. 2. After which, he sent the dead body for post mortem to Kanaklata Civil Hospital vide Ext. 4, Dead Body Challan. He prepared the sketch map vide Ext. 5 and seized one axe being M. Ext. 1 on the same being produced by the accused person vide Seizure List, Ext. 6. He stated that he arrested the accused and recorded the statement of witness and collected the post mortem report. He further stated that the accused admitted his guilt in his

presence. He stated that after completion of the investigation he submitted charge sheet against the accused under Section 302 of IPC vide Ext. 7.

15. PW 8 confirmed the statements made before him (as recorded in italics hereinbefore) by the witnesses, namely (i) PW 3, Smti. Hema Tanti vide Ext 8 (proved in original) (ii) PW 4, Sri Shankar Soban vide Ext. 9 (proved in original), (iii) PW 6, Sri Rajesh Tanti vide Ext. 10 (proved in original) (iv) PW 7 Sri Pabitra Tanti vide Ext. 11 (proved in original).

16. In his cross examination PW 8 stated that the FIR was received in the police station at about 8:15 AM on 13.05.08. He stated that the accused had appeared in the police station at 7.00 PM on 12.5.2008 and said that he had killed a man. On the basis of the said information, Dhekiajuli PS GDE No.298 dated 12.5.2008 was registered. Acting on the GDE, he went to the place of occurrence at 8.00 PM along with SDC Lakhinandan Saharia, CRPF personnel and a constable. He found the dead body in the room in which the deceased used to live. He further stated that the accused and the deceased shared the same house and the accused had told him that the deceased was his adopted son. He stated that in the seizure list it was not mentioned where the axe was seized. He stated that the Material Ext 1 which he saw in the Court on the day of deposition was rusted.

17. PW 8 further stated that in the charge sheet he had not mentioned that the accused appeared at the police station with an axe. He further stated that he had not found blood on the axe or the clothes worn by the accused and that he had not seized the wearing of the deceased as there was no blood stains on them. He stated that since it was a dark night he had not seen any blood on the floor. He denied that the statements being attributed to the witnesses namely, PW3, PW4, PW6 and PW7 were not stated by them before him.

18. PW 9, Sri Bimal Ch Deka deposed that on 12.5.2008 he was posted as In-Charge of Dhekiajuli PS. On the said day, at about 7 PM in evening, the accused appeared in the police station and informed him that he had killed one person with a kuthar/axe. Accordingly, he kept the accused in the police station for enquiry and sent SI, Mahendra Bora and CRPF party to Tulip Tea Estate. PW 9 stated that in this context, the GDE No. 298 being Ext 12, was recorded by him.

In cross examination PW 9 stated that in Ext 12 it was not recorded by him that the accused gave his jabanbandi/statement before Sri M. Bora, SI, Dhekiajuli. PW-9 admitted that he had asked SI of Police, Sri M. Bora to proceed to the place of occurrence on 12.5.2008 and he proceeded as such on the same date.

Discussion, Decision and Reason thereof

20. From the evidence on record, it not disputed that one "Mohan" died. It is further clear that the dead body of the deceased was lying in the house in which the said "Mohan" used to reside. It has clearly come on record that the accused and the deceased used to share the same house. From the cross examination of the Investigating Officer (PW 8) and the evidence of PW-9, it has been brought on record that Dhekiajuli GDE No.298 was registered on the date of occurrence, that is, 12.5.2008 and acting on the same, PW 8 along with other police personnel and Executive Magistrate, visited the place of occurrence and recovered the dead body of Mohan. This gives credence to the statement of the PW 8 in his examination-in-chief to the effect that the accused had gone to the police station and informed the police about the occurrence, whereupon they left for the place of occurrence. The question thus arises as to how did Mohan die ?

21. PW 1, Dr. Gopendra Mohan Das, who performed the post mortem examination on the dead body of Mohan, found the following injuries:

- (i) Sharp cut injury of dimension 3"x 2" deep to bone size over right parietal region of scalp with fracture of right parietal bone.
- (ii) A sharp cut injury of dimension 4"x2" deep to bone size over left parietal region of scalp with fracture of left parietal bone.

In the opinion of the Medical Officer, the cause of death was due to haemorrhage and shock sustained by the deceased as a result of grievous cut injury over scalp with intracranial haemorrhage. The cause of death of the deceased Mohan is not found to have been contradicted. Thus from the evidence of PW 1 it is clear that death was caused because of haemorrhage and shock as a result of grievous cut injuries over the scalp. This necessarily leads us to the question as to how did Mohan suffer grievous cut injuries over his scalp.

22. As many as four witnesses have turned hostile in the instant case. They are, PW 3, the wife of the deceased who lodged the FIR (ii) PW 4, VDP Secretary and Sardar of the Tea Estate who accompanied the dead body to Kanaklata Civil Hospital for Post Mortem (iii) PW 6 and PW 7 who signed as witnesses on the inquest report.

23. Learned Counsel for the defence contended that admittedly PW 3, 4, 6 and 7 are hostile witnesses and therefore their evidence cannot be relied upon.

24. Law with regard to evidence of hostile witnesses is well settled as held by the Hon'ble Supreme Court in **Bhagwan Singh v. State of Haryana AIR 1976 SC 202** to the effect that it is not correct to say that when a witness is cross-examined by the party calling him, his evidence cannot be believed in part and disbelieved in part but must be excluded from the consideration altogether. The correct rule is that either side may rely upon his evidence and that the whole of the evidence so far as it affects both parties favourably or unfavourably must be considered for what it is worth.

25. Ld Counsel for the defence submitted that lodging of the FIR itself has been denied by the PW 3, wife of the accused and hence the case of the prosecution has no legs to stand. In my considered view, that PW 3 subsequently retracted and declined having lodged the FIR is of no consequence, in as much as, the investigation had already started with the GDE No.298 (Ext 12) as stated by PW 9. Moreover non registration of an FIR at the first instant by the police too, in view of the judgment rendered by the Hon'ble Supreme Court in **Animi Reddy Venkata Ramana and others -Vrs- Public Prosecutor, HC of AP, reported in 2008 Cri.L.J. 2038** is not fatal for the prosecution, in as much as, the police discharged its duty by immediately proceeding to the place of occurrence and starting investigation.

26. Analysing the evidence of PW 3, 4, 6 and 7 it is seen that PW 3 is the wife of the accused and all others are co-villagers. All of them have made positive statement before the IO on the date of the occurrence itself. PW 3 and other co-villagers subsequently concealed the truth and turned hostile. The statements of these witnesses have been duly brought on record and confirmed by the prosecution through PW 8, the Investigation Officer of the case as Exbt 8, 9, 10 and 11. In her statement, PW 3 had in no uncertain terms stated that the accused had a quarrel with Mohan on some domestic issue and hacked him with an axe and thereafter the accused went to the police station. The said in fact, finds corroboration in the cross examination of the IO (PW8) and the evidence of PW 9, where they have stated about GDE No. 298 (Ext 12). At the very outset, the latter itself establishes that the accused hacked Mohan with an axe. However since subsequently, PW 3 retracted from her statement (though the same has been proved by the I/O), the important aspect which is to be seen is whether there is supporting and corroborating evidence in the instant case.

27. Exbt 6 is the seizure list which reveals that the weapon of assault, that is, axe, was seized by the police on being handed over

by the accused himself. The latter was duly confirmed by PW 8, who stated that the accused came to the police station with the axe in hand whereupon it was seized. This is a vital piece of circumstance against the accused and the same cannot be overlooked.

28. Furthermore, the recovery of the dead body of the deceased in the house of the accused, on information to that effect having been given by the accused himself to the police is another formidable piece of evidence. There is no reason to disbelieve the I/O in this respect. The knowledge of the accused that the dead body was lying in his house and the information to that effect given by the accused to the IO, enabled the police to recover the dead body of Mohan. This is another clinching factor for the prosecution.

29. PW 8, the Investigation Officer's evidence to the effect that the accused went to the police station with an axe and informed that he had killed Mohan, whereupon the accused was arrested and axe seized and thereafter dead body of Mohan was recovered from the house of the accused, inquest conducted, statement of witnesses recorded and dead body sent for autopsy where the cause of death was haemorrhagic shock due to the injuries suffered by the deceased, have thus duly been established by the prosecution.

30. Summing the evidence, it is apparent that the prosecution has been able to prove that the accused presented himself at the police station along with the weapon of assault on 12.5.2008 which was seized vide Exbt 6. Subsequently dead body of Mohan was recovered from the house of the deceased at Tulip T.E (Eastline); Inquest was conducted vide Exbt 2. In Ext 2, it has been recorded that there was one heavy cut mark in the front side. In post mortem examination it was revealed that death of the deceased was caused due to haemorrhage and shock as a result of cut injuries on the scalp as described in the Post Mortem Report (Exbt 1). The nature of injuries, reveal that the same could have been caused by axe, the seized weapon of assault. Thus in spite of the witnesses turning hostile, the chain of circumstances as discussed

above, supports the prosecution case and is seen to be convincing and complete, pointing towards nothing but the complicity of the accused.

31. Ld Counsel for the Accused relying on the judgment of the Hon'ble Gauhati High Court delivered in **Crl Appeal (J) No. 112 of 2004 (Milan Baidaya vs State of Assam)** submits that the Hon'ble Gauhati High Court reversed the finding of guilt holding that the chain of circumstance was not complete in view of the evidence of on record the said case and delivered a judgment of acquittal. I have carefully perused the said judgment. In the instant case, however, as discussed hereinabove, in the considered opinion of this Court, the chain of circumstance is complete and hence the said judgment is of no assistance to the defence.

32. From the materials on record it is crystal clear that the accused inflicted cut injuries on the scalp of the deceased. It has come on record through PW 3, that there was a quarrel between the accused and the deceased Mohan on some domestic issue just before the accused inflicted the said injuries. It is also apparent that the accused gave a single blow on the forehead. However in spite of the same it is clear that the accused took undue advantage and inflicted injuries on the head with an axe. There is no evidence on record to suggest that there was any provocation to cause death.

33. The dimension and force of the cut and the fact that the same was inflicted on the vital part of the body establishes that the nature and extent of the injuries are sufficient in the ordinary course of nature to cause death. Again, the weapon of assault (Material Ext.1), that is, an axe is certainly a dangerous instrument when used as a weapon and that too on such a vital part of the body as the head of a person. The amount of force employed, is clear from the extent and depth of the injuries sustained by the deceased and the fact that the brain matter had come out of the

head. Thus in the considered view of this Court, that the injury inflicted by the accused was sufficient in the ordinary course of nature to cause death has been proved objectively and medically, by the prosecution.

34. Thus, this Court has no hesitation to hold that the act of the accused comes within the ambit of the third clause of section 300 I.P.C , making the accused liable for punishment under section 302 I.P.C.

35. In the result, it is held that the prosecution has been able to prove its case beyond reasonable doubt and consequently, the accused, Ranjit Tanti is convicted of the offence under section 302 I.P.C.

36. Convict Ranjit Tanti is heard in person on the point of sentence. He submits that he is innocent. He is poor and he has three small children. At this stage this Court cannot appreciate such submission of the convict as this Court has already found him guilty of commission of offence punishable under section 302 IPC. Learned Counsel for the convict Ranjit Tanti is present and submits that capital sentence is not warranted. Learned Addl PP too submits that this is not a case of 'rarest of rare' category. Therefore, life sentence would be appropriate.

37. Considering all the aspects, the accused/convict, Ranjit Tanti is sentenced to undergo R.I. for life and to pay a fine of Rs.3,000/- (Rupees three thousand) only, in default, S.I. for 1 (one) month under section 302 IPC.

38. Period of detention undergone so far by the accused shall be set off.

39. Let the seized item be destroyed in due course.

40. Deceased was residing with the accused as his adopted son. In absence of any material on record to show that any 'victim', as

such exits who may be considered to be compensated, this Court refrains from passing orders for compensation.

41. Let a free copy of this judgment be furnished to the convict immediately.

42. Let a copy of this judgment be forwarded to the District Magistrate, Sonitpur, Tezpur u/s 365 of the CrPC.

Given under my hand and seal of this Court on this 31st day of May, 2014 at Tezpur.

Addl. Sessions Judge No.2
Sonitpur, Tezpur

A-N-N-E-X-U-R-E

1. Witnesses for Prosecution

- P.W. 1: Dr. Gonendra Mohan Das, M & HO
- P.W. 2: Sri Debaru Gowala
- P.W. 3: Smt. Hema Tanti
- P.W. 4: Sri Shankar Soban
- P.W. 5: Sri Binoy Paul
- P.W. 6: Sri Rajesh Tanti
- P.W. 7: Sri Pabitra Tanti
- P.W. 8: Sri Mahedra Mohan Bora, S/I of Police

2. Witnesses for Defence

NIL

3. Court Witnesses

NIL

4. Prosecution Exhibits

- Ext. 1: Post Mortem Report
- Ext. 2: Inquest Report
- Ext. 3: FIR
- Ext. 4: Dead Body Challan
- Ext. 5: Sketch Map
- Ext. 6: Seizure List
- Ext. 7: Charge Sheet
- Ext. 8: Statement of PW 3 (proved in original)
- Ext. 9: Statement of PW 4 (proved in original)
- Ext. 10: Statement of PW 6 (proved in original)
- Ext. 11: Statement of PW 7 (proved in original)

5. Defence Exhibits

NIL

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