

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

SESSION CASE NO. 108 of 2019

Under section 302 of I.P.C
(Arising out of G. R Case No. 905 of 2019)

State of Assam

-Vs-

Ramu Karmakar

... Accused Person

**Present: Sri C.B. Gogoi,
Sessions Judge,
Sonitpur :Sonitpur.**

For the State : Mr. M.C. Baruah, Public Prosecutor

For the accused : Mr Rupjyoti Baruah, Legal Aid counsel.

Date of Argument : 13-08-2021

Date of Judgment : **25-08-2021**

JUDGMENT

1. The brief fact of the prosecution case is that on 25-03-2019 one Amala Singh, General Manager of Kachari Gaon Tea Estate lodged an FIR in Rangapara Police Station informing that at around 12.30 AM one Phulanti was seriously injured by her husband. Accordingly, she was forwarded to Garden Hospital for treatment. Hence, the case for investigation and action in accordance with law.

2. Following the information, police of Rangapara Police station got a case registered being Rangapara PS case No. 53/2019 u/s 302 IPC

and O/C Budhin Pegu of Rangapara Police station entrusted SI Bhaity Ahmed to investigate the case.

3. Accordingly, the Investigating Officer visited the place of occurrence, recorded the statement of witnesses u/s 161 Cr.P.C., seized one lathi size approx 2' vide seizure memo, Ext.2 (MR No. 09/19), did inquest on the dead body (Ext. 5), did post mortem on the dead body of the deceased, (Ext. 4), drew the sketch map, (Ext. 7), collected post mortem report (Ext. 4) and on conclusion of investigation, having found prima-facie case finally laid the charge-sheet (Ext. 8) against accused Ramu Karmakar u/s 302 IPC to stand trial.

4. During the course of trial, when accused appeared in Court, the learned Addl. Chief Judicial Magistrate, Sonitpur, Tezpur, vide order dated 02-07-2019 committed the case record against accused Ramu Karmakar to the Court of Sessions for trial after due compliance of Section 207 Cr.P.C.

5. Receiving the case record on committal, my learned predecessor registered a case being Sessions Case No. 108 of 2019 and made over the case to the Court of Learned Addl. Sessions Judge, Sonitpur, Tezpur who vide order dated 16-07-2019 having found prima-facie case, framed charge against accused Ramu Karmakar u/s 302 IPC. The particulars of the offence on being read over and explained accused pleaded not guilty and claimed trial. Accordingly, prosecution was asked to summon the witnesses.

6. During the course of trial, prosecution examined as many as 10 (Ten) witnesses including the informant, the Medical officer as well as the Investigating Officer.

7. At the end of the prosecution evidence, accused was examined u/s 313 Cr.P.C., but, accused denied all the prosecution evidence as

totally false and concocted. On being asked, accused however, declined to adduce defence evidence.

8. POINT FOR DETERMINATION :

"Whether on 25-03-2019 accused committed murder of Smti Phulanti Karmakar and thereby committed offence punishable u/s 302 IPC as alleged ?"

Discussions, Decisions and Reasons thereof.

9. I have heard the arduous argument of the learned lawyers appearing for both sides.

10. The learned PP Mr. M.C. Baruah, appearing for the State arduously contended that prosecution has been able to establish the case against accused Ramu Karmakar for sustaining conviction u/s 302 IPC because it was accused Ramu Karmakar who assaulted his wife very badly as a consequence of which she was taken to hospital but she succumbed to her injuries. There is no evidence to suggest the involvement of any other person except accused Ramu Karmakar who assaulted his wife in his own house. Therefore, learned PP submitted that the accused may be punished adequately in accordance with law.

11. On the other hand, learned counsel Sri Rupjyoti Baruah appearing for accused Ramu Karmakar vehemently contended that prosecution has miserably failed to prove the case against accused Ramu Karmakar. According to learned counsel Sri Rupjyoti Baruah there is no direct eye witness to the occurrence. None had seen the accused assaulting his wife. Nobody has even said exactly at what time accused assaulted his wife and with which type of instrument. Even though, prosecution examined as many as 10 (Ten) witnesses, none of the

prosecution witnesses have seen the incident in question. All the evidence of the witnesses is hearsay and based on assumptions and presumptions and no conviction can be sustained on the basis of such assumptive evidence only. When the punishment for commission of an offence is higher/more, a serious responsibility lies on the prosecution to establish the case against accused with more credible and trustworthy evidence for sustaining conviction. In the absence of any direct evidence against accused of having committed murder no conviction can be sustained on the basis of moral conviction of court.

12. Learned counsel Sri Baruah appearing for the accused further pointed out that PW1 Amala Singh who lodged the FIR had not seen the incident. He lodged the FIR being the manager of the Tea Estate based on information received from others. The FIR also does not disclose from whom informant received the information. PW2 Smti Archana Gowala claim to have seen the accused having been drunk and assaulting his wife but, in her cross-examination she stated that the day of incident was Friday whereas if one goes by the allegation in the FIR the incident in question took place on 25-03-2019 i.e. on Monday. Therefore, there is gross inconsistency in the evidence of PW2 regarding the date of incident which itself raise a serious doubt about the trustworthiness and authenticity of her evidence.

13. It is also contended by learned defence counsel Sri Baruah that evidence of PW3 Smti Sonti Karmakar, PW4 Smti Ranjita Karmakar, PW5 Bikash Bag, PW6 Amal Kherowar are all hearsay which do not carry any evidentiary value, therefore, their evidence is unworthy of credit.

14. PW7 Dr Shaligram Tiwari merely attended the injured on 25-03-2019 at 12.30 AM at night in injured condition but he had not seen the incident. The evidence of PW8 Dr Samuel Tokbi also cannot be relied on in the absence of any evidence to show who have assaulted the deceased. Moreover, he did the post-mortem on 30-03-2019 at 1.15 PM.

Therefore, it is not clear on which date Phulanti Karmakar expired. As such, there is doubt about the actual date of death of deceased Phulanti as there is no evidence to that effect. The evidence of PW8 Dr. Samuel Tokbi doctor do not help the prosecution case as the injury found on the dead body could not be linked with the person who in fact caused the injuries. Evidence of PW9 ASI Naren Ch Boro also cannot be accepted as he is not authorized person under law to carry out inquest being a police personnel. The last but not the least the evidence of I.O. Bhaity Ahmed also do not help the prosecution case as he was also not an eye witness to the occurrence. He also failed to collect any circumstantial evidence against the accused to link him with the offence of murder. Therefore, learned counsel Sri Baruah submitted that it is a fit case to record judgment of acquittal on the ground of insufficiency of evidence.

15. Having heard the forceful argument of the learned lawyers appearing for both sides and on consideration of entire evidence available on record what emerged before this court is that there is no direct eye witness account regarding the unfortunate incident of assault except PW2 Archana Gowala who had seen accused Ramu Karmakar assaulting his wife at about 5/6 PM.

16. Ext. 3 the forwarding report by Medical Officer of Kachari Gaon Tea Estate Shaligram Tiwari addressed to General Manager, Kachari Gaon Tea Estate reveals that at about 12.30 AM Mrs. Phulanti was brought to the hospital in injured condition having internal injury of her thorax, hip bone and other vital part of her body caused by her husband Ramu Karmakar casual worker of Kachari Gaon Tea Estate. FIR (Ext. 1) also reveals that Smti Phulanti was brought to the Garden Hospital at around 12.30 AM in injured condition caused by her husband Ramu Karmakar. Both Ext. 3 and Ext. 1 reveals that the incident occurred on 25-03-2019. Evidence of PW8 ASI Naren Ch. Boro reveals that he did the inquest on the dead body of deceased on 29-03-2019 and evidence of PW8 Dr Samuel Tokbi reveals that he did the post mortem on 30-03-

2019 at 1.15 PM in connection with TMCH OP GDE No. 370 dated 30-03-2019. Therefore, it is evident that Phulonti Karmakar died on 29-03-2019.

17. In his evidence PW8 Dr Samuel Tokbi deposed that on 30-03-2019 at about 1.15 PM he did the post mortem examination on the dead body of Phulonti Karmakar and found the following injuries:

i) Partially healed multiple abrasion of size varying from 1cm x 1 cm to 2cm x 1cm is present over the right knee, which is covered with dark blackish scab.

ii) Multiple abrasion of size varying from 0'5cm x 1cm to 2cm x 1cm is present over left knee which is covered with dark blackish scab.

iii) Abrasion of size varying from 0'2cm x 0'3cm to 0'5cm x 5cm is present over the upper part of thigh (right) lateral aspect, 2cm below anterior superior iliac spine. Abrasion is covered with dark blackish scab.

iv) Abrasion of size 4cm x 3cm is present 1 cm below right eye.

v) Abrasion of size 4cm x 2cm is present over right cheek.

vi) Abrasion of size 4cm x 1cm is present over left cheek.

vii) Abrasion of size 3cm x 3cm is present over right shoulder joint are. All abrasion described are covered with dark blackish scab.

In his opinion the death of deceased was due to coma as a result of injuries sustained over the head. All the injuries were ante-mortem and caused by blunt force impact and approximate time since death is 12 to 24 hours.

18. Now the only link to connect accused Ramu Karmakar with the death of his wife Phulonti Karmakar is the evidence of PW2 Archana Gowala according to whom she had seen accused Ramu Karmakar assaulting his wife under drunken state and she prevented him from doing so and thereafter went to the church for prayer. In her cross-examination also PW2 Archana Gowala said that she could not remember the date but the day was mentioned as Friday and she

confirmed the fact that she saw accused Ramu Karmakar beating his wife at about 5/6 PM and later part of the cross examination she said that she saw the murpit from a distance of 20 feet and her residence is situated only at a distance of 20 feet from the house of accused. It is also seen that there is no such contradiction in the evidence of PW2 Archana Gowala with that of her statement recorded by police u/s 161 Cr.P.C. regarding the incident of assault by accused Ramu Karmakar to his wife Phulonti Karmakar under the influence of alcohol. In her evidence in court she exactly reiterated the same fact in court on oath. Therefore, evidence of PW2 bears credence. More particularly, her evidence has been corroborated by the evidence of PW7 Dr Shaligram Tiwari and PW8 Dr Samuel Tokbi in material particulars as PW7 Dr Shaligram Tiwari clearly stated that on 25-03-2019 at about 12.30 AM at night one Mrs. Phulonti Karmakar of Itabhata Line was brought to the hospital with acute internal injury of her thorax, hip bone and other vital organs. Therefore, evidence of PW7 clearly support the version of PW2 Archana Gowala. Evidence of PW8 Dr Samuel Tokbi also supported the version of PW2 Archana Gowala and PW7 Dr Shaligram Tiwari.

19. From the evidence of PW2 Archana Gowala it is abundantly clear that deceased Phulonti and accused Ramu Karmakar are her next door neighbour and she being the neighbour knows that very well. Therefore, the fact that she had seen accused Ramu Karmakar assaulting his wife Phulonti Karmakar on 25-03-2019 is a fact worthy of credence and to be believed by a prudent man. It is most worthy to note that in Labour Line of Tea Garden, it is most common scene of husband and wife quarrelling with each other under the influence of alcohol and witnesses not paying much interest in it usual because of commonality of such incident. So, the evidence of PW2 Archana Gowala is quiet natural. She made no improvement or adduced any exaggerated evidence in court which makes her evidence worthy of credence. Her evidence clearly establish the fact that accused Ramu Karmakar was last seen together

with deceased Phulonti Karmakar on which date he was also seen assaulting Phulonti Karmakar. The subsequent chain of events that follows reveals as deposed by PW7 Dr. Shaligram Tiwari that Phulonti Karmakar was rushed to Garden Hospital at 12.30 AM on 25-03-2019 with acute internal injury of her thorax, hip bone and other vital organ and evidence of PW1 Amala Singh who lodged the FIR (Ext. 1) also reveals that on 24-03-2019 at around 12.30 AM he got the information that wife of accused Ramu Karmakar was admitted in Garden Hospital and he got the information from Garden Doctor and on 25-03-2019 he lodged the FIR and at the time of lodging the FIR condition of the injured was serious. The chain of events narrated above, shows that Phulonti Karmakar died on 29-03-2019 as a consequence of injuries caused to her by accused Ramu Karmakar on 25-03-2019 in the evening hours and therefore, it clearly points the accusing finger to none other than accused Ramu Karmakar the husband of deceased. Therefore, in this case, the theory of last seen together is squarely applicable in the absence of any plausible explanation provided by accused.

20. Section 106 of Indian Evidence Act says that when any fact is within the knowledge of any person, the burden of proving that fact is upon him. In the present case, accused Ramu Karmakar had the knowledge that on the relevant date i.e. on 25-03-2019 in the evening hours his wife Phulonti Karmakar was with accused but accused have not explained under what circumstances his wife died. In the present case, the time gap between the incident of assault caused by accused Ramu Karmakar to his wife was around 5/6 hours as PW2 Archana Gowala saw him assaulting his wife at 5/6 PM on 24-03-2019 and Phulonti Karmakar was admitted in the hospital at 12.30 AM on 25-03-2019 at the dead of night. It is to be noted that PW2 Archana Gowala is a labourer in the Tea Garden and she being the labourer may not be able to remember the exact date and day as she was examined in court on 04-10-2019 after a gap of around 7 months of the incident.

Therefore, she may not be able to recollect and reproduce every minute detail in court but this does not mean that her residence is to be discarded as unworthy of credence.

21. Moreover, it is apparent on record that during the intervening period of Archana Gowala having seen the assault caused by accused and admitting Phulanti Karmakar in Garden Hospital at 12.30 AM there is no evidence to show the access of any third party for doubting the incident of assault by another person other than accused Ramu Karmakar because, the very incident of assault caused by accused took place in front of the house of accused itself.

22. Evidently, accused assaulted his wife under the influence of alcohol during the time of "Holi" and therefore, the act of the accused admittedly fall within the parameters of Section 304 Part II of IPC as he did the act whilst deprive of the power of self control under the influence of alcohol. His act fall under Exception 4 of Section 300 as he committed the act of assault on his wife without premeditation in a sudden fight in a heat of passion upon a certain quarrel with his wife.

23. In view of the foregoing discussion and reason, this court come to unerring conclusion that though accused Ramu Karmakar was charged u/s 302 IPC, but he is found guilty u/s 304 Part II of IPC and convict him accordingly.

24. I have considered the Probation of Offenders Act. Accused in the present case is aged about 33 years and he is a matured man well aware about the consequences of his act. Therefore, this Court do not consider it a fit case to invoke the provision of the Probation of Offenders Act in respect of accused person.

SENTENCE HEARING

25. I have heard accused Ramu Karmakar on the point of sentence as provided u/s 235 (2) Cr.P.C. It is submitted that accused is 34 years old and having his future prospect. Therefore, accused prays to impose lesser punishment.

26. Having taken into consideration the nature and gravity of the crime and chilling effect of such crime in the society irrespective of the fact that accused is young and his entire future is before him, this Court consider it appropriate to sentence the accused adequately to send a clear signal to the society that offenders would not go unpunished.

27. Therefore, considering all the pros and cons, this Court is of the considered view that awarding rigorous imprisonment for a term of 7 (Seven) years and to pay a fine of Rs. 500/- (Rupees Five Hundred) only for offence under Section 304 Part II IPC would serve the ends of justice. In default of payment of fine, accused shall be liable to undergo 3 (three) months simple imprisonment.

28. The period of detention, if any, already undergone by accused during the course of investigation, enquiry or trial shall be set off against the term of imprisonment as provided u/s 428 Cr.P.C.

29. Let a copy of the judgment be furnished to accused person free of cost as provided in section 363 Cr.P.C.

30. Accused has been informed about his right of appeal to Higher Court against the judgment of conviction and sentence.

31. Let a copy of the judgment be forwarded to the learned District Magistrate, Sonitpur as provided in section 365 Cr.P.C.

- 32.** Send back the GR case to the learned committal court.
- 33.** Judgment is pronounced and delivered in open court under digital signature of this Court on this **25th day of August, 2021.**

(C.B.Gogoi)
Sessions Judge,
Sonitpur, Tezpur.

Dictated and Corrected by me

(C.B. Gogoi)
Sessions Judge
Sonipur, Tezpur

APPENDIX

Prosecution Witness

- | | | | |
|-----|---------------------------|----|-------------------------|
| 1. | Prosecution Witness No.1 | :- | Sri Amala Singh. |
| 2. | Prosecution Witness No.2 | :- | Smti Archana Gowala. |
| 3. | Prosecution Witness No.3 | :- | Smti Sonti Karmakar. |
| 4. | Prosecution Witness No.4 | :- | Sri Subal Karmakar. |
| 5. | Prosecution Witness No.5 | :- | Sri Bikash Bag. |
| 6. | Prosecution Witness No.6 | :- | Sri Amal Kherowar. |
| 7. | Prosecution Witness No.7 | :- | Dr. Shaligram Tiwari. |
| 8. | Prosecution Witness No.8 | :- | Dr. Samuel Tokbi. |
| 9. | Prosecution Witness No.9 | :- | ASI Naren Chandra Boro. |
| 10. | Prosecution Witness No.10 | :- | Bhaity Ahmed. |

EXHIBITS.

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|---------------|---|---|
| Exhibit 1 | : | F.I.R. |
| Exhibit 1(1) | : | Signature of PW1 Sri Amala Singh. |
| Exhibit 2 | : | Seizure List. |
| Exhibit 2(1) | : | Signatures of PW5 Sri Bikash Bag. |
| Exhibit 2 (2) | : | Signature of PW6 Sri Amal Kherowar. |
| Exhibit 2(3) | : | Signature of PW10 Bhaity Ahmed. |
| Exhibit 3 | : | Forwarding letter addressed to General Manager Kacharigaon Tea Estate, Rangapara. |
| Exhibit 3 (1) | : | Signature of PW7 Dr Shaligram Tiwari. |
| Exhibit 4 | : | Post-mortem Report. |
| Exhibit 4 (1) | : | Signature of PW8 Dr Samuel Tokbi. |
| Exhibit 4 (2) | : | Signature of Dr. P.K. Thakura. |
| Exhibit 5 | : | Inquest Report. |

Exhibit 5 (1) : Signature of PW9 ASI Naren Chandra Boro.
Exhibit 6 : Dead Body Challan.
Exhibit 6(1) : Singature of PW9 ASI Naren Chandra Boro.
Exhibit 7 : Sketch Map.
Exhibit 7 (1) : Signature of PW10 Bhaity Ahmed.
Exhibit 8 : Charge-sheet.
Exhibit 8 (1) : Signature of PW10 Bhaity Ahmed.

(C.B. Gogoi)
Sessions Judge,
Sonitpur, Tezpur