

IN THE COURT OF SESSIONS JUDGE : LAKHIMPUR :
AT NORTH LAKHIMPUR.

P R E S E N T - M.A.Choudhury,
Sessions Judge,
Lakhimpur, North Lakhimpur.

SESSIONS CASE NO.2(NL)2014.

Under Section - 302 IPC.

P A R T I E S

State of Assam. ... Complainant.

-versus-

Sri Jonas Bodra. ... Accused.

ADVOCATES APPEARED IN THE CASE :

Mr. Jagneswar Saikia, Public Prosecutor. For the State of Assam.
Mr. Khursed Alam, Advocate. For the Accused.

Date of framing of charge. : 08.04.2014.
Dates of taking evidence. : 30.11.2015, 21.06.2016, 07.09.2016,
15.11.2016, 22.08.2017 and
05.12.2017.
Date of hearing Argument. : 08.11.2019.
Date of delivery of Judgment. : 22.11.2019.

J U D G M E N T

1. The case of the prosecution side may, in brief, be described thus :

On 01.02.2013, Smti Johna Bodra, wife of Suleman Bodra of village Gormurh Sonapur, P.S. North Lakhimpur, Dist. Lakhimpur, lodged an ejarah with Laluk Police Station to the effect that Suleman Bodra was her husband. On 31.01.2013 at night at about 9 pm, her husband, Suleman Bodra went to assault his father, Larger Bodra with a 'lathi' in their house. At that time, the accused, Sri

Contd...

Jonas Bodra, who is the younger brother of her husband, Suleman Bodra tried to prevent her husband, Suleman Bodra from committing 'marpit' upon the person of their father, Larger Bodra. But, her husband, Suleman Bodra then attempted to assault the accused, Sri Jonas Bodra. Then, the accused Sri Jonas Bodra committed 'marpit' upon the person of Suleman Bodra with a bamboo stick. Thereafter, on the same night at about 3 am, her husband Suleman Bodra succumbed to the injuries.

2. On receiving the ejahar, the Officer-in-charge of Laluk Police Station registered a case vide Laluk P.S. Case No.23/2013 under Section 302 IPC.

3. The police started the investigation of the case. In course of investigation, the I.O. visited the place of occurrence and prepared sketch map of the place of occurrence. The I.O. recorded the statements of the witnesses u/s 161 CrPC. The I.O. got conducted the inquest upon the dead body of Suleman Bodra by the Circle Officer of Bihpuria Revenue circle. Thereafter, the dead body of Suleman Bodra was forwarded to North Lakhimpur Civil Hospital for Post Mortem examination. The Post Mortem Examination upon the dead body of the deceased, Suleman Bodra was conducted on 02.02.2013 by the doctor at North Lakhimpur Civil Hospital. The I.O. arrested the accused, Sri Jonas Bodra and forwarded him before the court. The I.O. collected the Post Mortem Examination Report of the deceased, Suleman Bodra from North Lakhimpur Civil Hospital. After completion of investigation of the case, the I.O. of the case on being found sufficient incriminating materials against the accused, Sri Jonas Bodra under Section 302 IPC, submitted the charge-sheet against the accused, Sri Jonas Bodra under Section 302 IPC.

4. On receiving the charge-sheet, the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, forwarded the case to the court of learned Judicial Magistrate 1st class, North Lakhimpur. The learned Judicial Magistrate 1st class, North Lakhimpur, on receiving the

Contd...

case took cognizance of the case and as the offence u/s 302 IPC is exclusively triable by the court of Sessions, the learned Judicial Magistrate 1st class, North Lakhimpur, after complying with the provisions of Sec.207 CrPC committed the case to this court for trial.

5. The accused, Sri Jonas Bodra made his appearance before the court. After hearing the learned advocates of both sides and perusing the case record, on being found sufficient incriminating materials against the accused person under Section 302 IPC in the case record, the charge under Section 302 IPC was framed against the accused person. The charge was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

6. In course of trial, the prosecution side examined 9 (Nine) witnesses. The all witnesses as mentioned in the charge-sheet except the I.O. of the case have been examined in the case. The all prosecution witnesses in this case have been examined by my learned predecessor.

7. The statements of the accused person was recorded u/s 313 CrPC. The accused person in his statement denied commission of any offence.

8. The accused person led no evidence in his defence.

9. Heard Argument from the learned advocates of both sides.

10. I have perused the case record and the evidence adduced by the prosecution witnesses in the case very carefully.

Contd...

11. The points for determination in this case are :

- (I) Whether Suleman Bodra @ Selai Bodra was done to death?
- (II) Whether the accused, Sri Jonas Bodra had caused death of Suleman Bodra?
- (III) Whether the death of Suleman Bodra was done with the intention of causing his death?

DECISION AND REASONS THEREOF:

12. At the very outset, let us look into the medical evidence so adduced by Dr. Dhrubajyoti Borgohain as P.W.6. The Doctor on 02.02.2013 was working as Sr. Medical & Health officer at North Lakhimpur Civil Hospital. On that day, the Doctor performed Post Mortem Examination upon the dead body of Suleman Bodra and found as follows:-

“ EXTERNAL APPEARANCE :

- 1. Condition of subject stout enunciated, decomposed etc. :
Average built. Black complexion. Rigor mortis present.
- 2. Wounds position and character :
Multiple bruise and abrasions over right and left lower limbs. Bruises in the scalp. Occipital and parietal areas.

CRANIUM AND SPINAL CORD :

- 1. Scalp, skull and vertebra :
Bruise in both parietal and occipital areas. Linear fracture of occipital bone.
- 2. Membrane :
Intact.
- 3. Brain and spinal cord :
Intra cerebral haematoma. Lacerations of brain matters in the occipital area.

Contd...

THORAX

1. Walls, ribs and cartilages :
Multiple bruises over the chest.

ABDOMEN

N.A.D.

MUSCLES, BONES AND JOINTS

Multiple compound fractures of right leg near right knee joint. Left leg muscles teared off.

MORE DETAILED DESCRIPTION OF INJURY OR DISEASE :

Multiple compound fractures of right leg and left leg muscles teared off. Mediastinal organs teared off and blood in the mediastinum. Bruises in the parieto occipital area. Intra cerebral haematoma and tears of brain matters.”

In the opinion of the doctor, cause of death is due to intra cerebral haematoma and lacerations of occipital lobe and brain matters as well as mediastinal injury which is ante mortem in nature.

The doctor proved the Post Mortem Examination Report as Ext.3 and Ext.3(1) is his signature in it.

The doctor was not subjected to cross-examination by the defence side. So, the findings of the doctor regarding the injury sustained by the deceased, Suleman Bodra remained intact and undisputed. The injuries found by the doctor over the dead body of the deceased, Suleman Bodra being multiple compound fractures of right leg and left leg muscles teared off, mediastinal organs teared off and blood in the mediastinum, bruises in the parieto occipital area and intra cerebral haematoma and tearing of brain matters are sufficient for causing death of the deceased.

Contd...

The evidence adduced by PW.6, Dr. Dhrubajyoti Borgohain together with Ext.3, the Post Mortem Examination Report make it abundantly clear that the death of the deceased, Suleman Bodra was homicidal, not a case of suicide or accident.

13. Keeping in mind what is stated above, I, at first, turn to the evidence of PW.1, Smti Johna Bodra, who is the wife of the deceased, Suleman Bodra as well as informant of the case. According to her evidence, the deceased Suleman Bodra @ Selai Bodra is her husband. The accused, Sri Jonas Bodra is the younger brother of her husband, Suleman Bodra. The occurrence had taken place 3 (three) years back at about 9 pm at night in their village road. At the time of occurrence, her husband went out towards the road. Thereafter, she found her husband lying dead on the side of the road on a heap of stones. She brought him to their house with the help of some Bengali boys. At about 2 am on the same night, her husband succumbed to his injuries.

This is the evidence adduced by PW.1, Smti Johna Bodra in her examination-in-chief. Thereafter, this witness was declared hostile by the prosecution side and was subjected to cross-examination by the prosecution side. The prosecution side while cross-examining this witness failed to bring out any facts and circumstances in favour of the prosecution side from her evidence. There is no any incriminating material in her evidence against the accused person regarding commission of any offence. She in her evidence stated that she only put her signature in the ejahar and she did not know the contents of the ejahar.

14. PW.2, Sri Larger Bodra is the father of the accused, Sri Jonas Bodra as well as the deceased, Suleman Bodra. According to his evidence, at the time of occurrence, he was at Dhalaibeel. So, he did not know anything about the occurrence. After coming from Dhalaibeel, he went to the Police Station. According to his evidence, the accused, Sri Jonas Bodra and the deceased, Suleman

Contd...

Bodra used to quarrel with each other due to land dispute. The deceased, Suleman Bodra used to consume liquor regularly. According to his evidence, he thought that there was an incident of 'marpit' between the accused and the deceased, for which the deceased might loss his life. He stated that he got information about the occurrence when he was at Dhalaibeel.

This is the evidence adduced by PW.2, Sri Larger Bodra. He in his evidence stated that he thought that there was an incident of 'marpit' between the accused and the deceased, for which the deceased might loss his life. From his evidence, it is found that he has no knowledge how the deceased was passed away. It is his opinion that there was 'marpit' between the accused and the deceased, for which the deceased might loss his life. An opinion can not be direct or indirect evidence. There is nothing in his evidence whether he heard about the 'marpit' between the accused and the deceased from any person. So, I do not find any convincing material in his evidence against the accused person for holding the accused person guilty for committing the murder of Suleman Bodra.

15. PW.3, Sri Eliazar Chandigaria in his evidence stated that the accused, Sri Jonas Bodra is the younger brother of the deceased, Suleman Bodra. Smti Johna Bodra is the wife of the deceased, Suleman Bodra. According to his evidence, the occurrence had taken place about 6/ 7 years back in the evening of a day. At the time of occurrence, he was the VDP Secretary. He in his evidence stated that he was called by the Officer-in-charge of Laluk Police Station, and accordingly, he went to the Police Station and the dead body of the deceased, Suleman Bodra was shown to him by the police. He in his evidence stated that he came to know from the police that the accused, Sri Jonas Bodra had killed Suleman Bodra. The police prepared a document after seeing the dead body and he put his signature in it. He in his evidence stated that he did not know how the deceased had died. From his evidence, it is found that when he went to Laluk Police Station, then the police stated to him that the accused,

Contd...

Sri Jonas Bodra had killed Suleman Bodra. He in his evidence did not mention the name of the police from whom he had heard that the accused had killed Suleman Bodra. There is nothing in his evidence how the police came to know that the accused had killed Suleman Bodra. So, there is no any incriminating material in the evidence adduced by PW.3, Sri Eliazar Chandigaria against the accused person.

16. PW.4, Sri Ranjit Biswas in his evidence stated that he knows the accused, Sri Jonas Bodra. He in his evidence stated that the deceased, Suleman Bodra was the elder brother of the accused, Sri Jonas Bodra. Smti Johna Bodra is the wife of the deceased, Suleman Bodra. According to his evidence, the occurrence had taken place about 2 (two) years back in a night at Tiniali. On the date of occurrence, he arrived home from his work at about 8.30 pm and then, he heard hue and cry and thereafter, he went out from his house and saw Suleman Bodra lying injured on the ground and the accused, Sri Jonas Bodra and Smti Johna Bodra, who is the wife of the deceased Suleman Bodra were there. The accused Sri Jonas Bodra and Smti Johna Bodra asked him to help them to carry the deceased into their house. He in his evidence stated that he came to know from the accused that he killed the deceased, Suleman Bodra. Then, he along with the accused, Sri Jonas Bodra and Smti Johna Bodra, the wife of the deceased Suleman Bodra took Suleman Bodra to his house and laid him on his bed. On the next day morning, he came to know that Suleman Bodra had died. He saw blood stains on the person of the deceased and one leg of the deceased was found hanging from the body. From his evidence, it is found that the accused made extra judicial confession before him that he had killed Suleman Bodra. He in his cross-examination stated that it was not a fact that he had deposed falsely that the accused stated before him that he had killed the deceased. But, at the same time, he in his cross-examination stated that he did not state such facts before the police during investigation.

So, from the evidence of PW.4, Sri Ranjit Biswas, it is found that when the police recorded his statement u/s 161 CrPC, he

Contd...

had not stated before the I.O. that he had come to know from the accused, Sri Jonas Bodra that he had killed the deceased. But, in his evidence, he stated that he came to know from the accused that he had killed the deceased. So, the evidence adduced by PW.4, Sri Ranjit Biswas does not inspire confidence of the court and appears as unreliable evidence.

17. PW.5, Sri Binod Biswas in his evidence stated that the accused, Sri Jonas Bodra is his neighbour. The deceased, Suleman Bodra was the elder brother of the accused. According to his evidence, on the date of occurrence at about 6 pm, after closing his shop while he was proceeding towards his house at about 7 pm, he found Suleman Bodra being carried by Sri Ranjit Biswas and the wife of the deceased Suleman Bodra to the house of Suleman Bodra. He came to know from his wife that the accused had killed his elder brother deceased, Suleman Bodra. On the next day morning, he came to know from the wife of the deceased that the deceased, Suleman Bodra had died. He went to the house of the deceased and found him dead. The wife of Suleman Bodra informed him and others that the accused had killed Suleman Bodra. From his evidence, it is found that he came to know from his wife that the accused had killed his elder brother deceased, Suleman Bodra. But the wife of Sri Binod Biswas has not been shown as witness in the case. He in his evidence also did not say how his wife came to know that the accused had killed his brother, Suleman Bodra. He in his evidence stated that the wife of the deceased i.e., Smti Johna Bodra informed him that the accused had killed the deceased, Suleman Bodra. But, Smti Johna Bodra who has been examined as PW.1 in her evidence neither said that the accused had killed her husband, Suleman Bodra nor she had stated to PW.5, Sri Binod Biswas that the accused had killed her husband, Suleman Bodra. So, the evidence adduced by PW.5, Sri Binod Biswas does not inspire confidence of the court and appears as unreliable evidence.

18. PW.7, Sri Sanjoy Soy in his evidence stated that he knows the accused, Sri Jonas Bodra. He also knows the informant

Contd...

Smti Johna Bodra and the deceased Suleman Bodra. According to his evidence, Suleman Bodra died as a result of the injuries sustained by him being caused by the accused, Sri Jonas Bodra. He saw the dead body of the deceased in the afternoon. He came to know that the accused, Sri Jonas Bodra had committed murder of the deceased, Suleman Bodra. He in his evidence stated that he could not say how the accused committed the alleged offence. He in his evidence stated that he saw the dead body of the deceased only while it was kept lying in his house. He in his cross-examination stated that he did not see the alleged incident as he was not present at the place of occurrence at the time of occurrence. From his evidence, it is found that Suleman Bodra died as a result of the injuries caused by the accused, Sri Jonas Bodra upon the person of Suleman Bodra. He in his evidence specifically stated that he did not see the alleged incident as he was not present at the place of occurrence at the time of occurrence. He in his evidence did not say from whom or how he came to know that the accused, Sri Jonas Bodra caused injuries upon the person of Suleman Bodra leading to his death. So, the evidence adduced by PW.7, Sri Sanjoy Soy is hearsay and inadmissible evidence.

19. PW.8, Smti Bina Soy in her evidence stated that she knows the accused, Sri Jonas Bodra. She in her evidence stated that the deceased, Suleman Bodra was the husband of her younger sister, Smti Johna Bodra. According to her evidence, the accused, Sri Jonas Bodra had committed murder of Suleman Bodra. After knowing about the alleged occurrence, he informed the matter to the Police Station and then, the dead body was taken to the Police Station. According to her evidence, she did not see the alleged occurrence of committing of murder of the deceased, Suleman Bodra. She only came to know that the accused, Sri Jonas Bodra committed murder of Suleman Bodra. She in her cross-examination stated that she did not see the alleged incident as she was not present at the place of occurrence at the time of occurrence.

Contd...

On a careful scrutiny of the evidence adduced by PW.8, Sri Bina Soy, it is found that she had stated in her evidence that the accused, Sri Jonas Bodra committed murder of Suleman Bodra, but at the same time, from her evidence, it is found that she did not see the alleged incident as she was not present at the place of occurrence at the time of occurrence. Certainly, she came to know from some other person that the accused, Sri Jonas Bodra had committed murder of Suleman Bodra. But, she in her evidence did not state how and from whom she came to know that the accused, Sri Jonas Bodra had committed murder of his elder brother, Suleman Bodra. So, the evidence adduced by PW.8, Smti Bina Soy is hearsay and inadmissible evidence.

20. PW.9, Sri Santuk Barla in his evidence stated that he knows the accused, Sri Jonas Bodra and the informant, Smti Johna Bodra as well as the deceased, Suleman Bodra. He in his evidence stated that the deceased Suleman Bodra is his brother-in-law. He in his evidence stated that the occurrence had taken place about 4 / 5 years back. He in his evidence stated that he was called by his sister, Rabia, who informed him that the accused, Sri Jonas Bodra had killed Suleman Bodra. Then, he came to the place of occurrence and saw the dead body of Suleman Bodra. The police also came to the place of occurrence. The police took the dead body of Suleman Bodra at North Lakhimpur Civil Hospital for Post Mortem examination.

On a careful scrutiny of the evidence adduced by PW.9, Sri Santuk Barla, it is found that he came to know from his sister, Rabia that the accused, Sri Jonas Bodra had killed the deceased, Suleman Bodra. But, his sister Rabia has not been shown as witness in the charge-sheet of the case by the I.O. He in his evidence also did not say how his sister, Rabia came to know that the accused, Sri Jonas Bodra had killed the deceased, Suleman Bodra. So, the evidence adduced by PW.9, Sri Santuk Barla is hearsay and inadmissible evidence. The evidence adduced by this witness can not be relied upon as it is inadmissible.

Contd...

21. Because of what have been discussed and pointed out here-in-above, it is appeared that the prosecution side has totally failed to prove the charge under Section 302 IPC brought against the accused person and the accused person deserves to be acquitted.

22. I, therefore, hold the accused, Sri Jonas Bodra not guilty and acquit him from the charge under Section 302 IPC. The accused person is set at his liberty forthwith.

23. Given under my hand and seal of this court on this the 22nd day of November, 2019.

(M. A. Choudhury)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Dictated & corrected by me -

(M.A.Choudhury)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Transcribed & typed by-
Sri Satyabrata Kshattri, Stenographer.

APPENDIX

1. WITNESSES EXAMINED BY THE PROSECUTION SIDE :

PW.1 - Smti Johna Bodra, the informant of the case as well as wife of the deceased, Suleman Bodra.

PW.2 - Sri Larger Bodra, the father of the deceased, Suleman Bodra as well as accused, Sri Jonas Bodra.

Contd...

PW.3 - Sri Eliazar Chandigaria.

PW.4 - Sri Ranjit Biswas.

PW.5 - Sri Binod Biswas.

PW.6 - Dr. Dhrubajyoti Borgohain, the M.O. of the case.

PW.7 - Sri Sanjoy Soy.

PW.8 - Smti Bina Soy.

PW.9 - Sri Santuk Barla.

2. WITNESSES EXAMINED BY THE DEFENCE SIDE :

Nil.

3. DOCUMENTS PRODUCED IN THE CASE BY THE PROSECUTION SIDE :

Ext.1 - Ejahar.

Ext.2 - Inquest Report of the deceased, Suleman Bodra.

Ext.3 - Post Mortem Examination Report of the deceased, Suleman Bodra.

4. DOCUMENTS PRODUCED IN THE CASE BY THE DEFENCE SIDE :

Nil.

(M. A. Choudhury)
Sessions Judge,
Lakhimpur, North Lakhimpur.
