

GAHC010012542018



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

**Case No. : CRL.A(J)/5/2018**

RADHARAMAN BHOWMIK  
S/O. LT. ANIL CH. BHOWMIK, R/O. SHYAMAPRASAD ROAD, P.S.  
KARIMGANJ, DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM  
GHC, GHY.

**Advocate for the Petitioner : DR. B N GOGOI, AMICUS CURIAE**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE MIR ALFAZ ALI**  
**HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

**JUDGMENT & ORDER**

**(Mir Alfaz Ali, J)**

Heard Dr. B.N. Gogoi, learned Amicus Curiae and Mr. M. Phukan, learned Additional Public Prosecutor, Assam.

2. This jail appeal is directed against the judgment and order dated 25.09.2017 passed

by the learned Sessions Judge, Karimganj in Sessions Case no. 20/2015 whereby the learned Sessions Judge convicted the appellant under Section 302, Indian Penal Code (IPC) and sentenced to rigorous imprisonment for life and fine of Rs. 500 with default stipulation.

3. The prosecution case as reflected in the FIR in brief was that the appellant married the victim and they were also blessed with two children, however, their conjugal life was not very happy and eventually on the date of occurrence, the appellant assaulted the victim being his wife demanding money whereby caused serious injury, to which the victim succumbed. Exhibit 1, FIR was lodged by Munna Das, on the basis of which police registered Karimganj Police Station Case no. 604/2014 under Sections 498(A)/304(B), IPC and on completion of the investigation, submitted charge sheet against the appellant.

4. In course of trial, learned Sessions Judge framed charge against the appellant under Section 302, IPC which was abjured by him. The prosecution examined 9 (nine) witnesses to substantiate the charge framed against the accused. On conclusion of the prosecution evidence, the appellant was examined under Section 313, CrPC, wherein the appellant had taken a plea, that when quarrel ensued between him and his wife on family issues, one Joy Dhar came to interfere, whereupon he got agitated and dealt a blow aiming at Joy Dhar. In the meantime, the victim came between them and the blow given by the appellant landed on the head of the victim which caused the injury. Thus, the plea of the appellant in the statement recorded under Section 313, CrPC was that he had no intention to cause any injury to his wife (victim) and the injury to the victim was caused accidentally. Upon appreciation of the evidence and materials brought on record, the learned Sessions Judge convicted the appellant and awarded sentence as indicated above.

5. Learned Amicus Curiae while assailing the impugned judgment does not contest the finding of the learned trial Court holding that the injury leading to death of the victim was caused by the present appellant. However, the contention of the learned Amicus Curiae is that there was no intention to cause death and, as such, the ingredients of the offence of murder as defined under Section 300, CrPC was not present. Therefore, the learned trial Court ought not to have recorded conviction under Section 302, IPC. At best, according to the learned Amicus Curiae, it was a case of culpable homicide not amounting to murder

punishable under Section 304 Part II, IPC.

6. On our assessment of the evidence, we find that the learned Sessions Judge basically relied upon the oral testimony of P.W.4 and P.W.5 who are the children of the deceased, besides the medical evidence as well as the statement of the accused-appellant recorded under Section 313, CrPC.

7. P.W.4 deposed that in the morning when she woke up, she had noticed that her parents were quarrelling. The victim sent her to wash her face. Accordingly, she came out and her mother started cleaning the utensils. At that point of time, she heard the scream of her mother and immediately rushed to the place of occurrence and found her mother falling on the ground. She had also noticed her father running away from the place of occurrence throwing away the rod which was in his hand. Immediately, she informed the P.W.1, her maternal uncle about the occurrence. The evidence of P.W.4 who is none but the daughter of the accused and also the victim remained unshaken.

8. P.W.5, the son of the victim also stated in the same tune that he had noticed his parents quarrelling in the morning and when he went to wash his face, he heard the scream of his mother and immediately came into the room and found the victim falling on the ground. He also stated to have seen the appellant hurriedly leaving the room by throwing the rod which was in his hand.

9. P.W.8, the Doctor who conducted the autopsy found a single injury on the head which in the opinion of the Doctor was caused by a blunt object.

10. As already indicated above, the stand taken by the appellant in his statement recorded under Section 313, CrPC was that when there was quarrel between the husband and wife, one Joy Dhar intervened, whereupon he got angry and dealt a blow aiming at Joy Dhar with a rod which accidentally landed on the victim. It is the trite law, that statement recorded under Section 313, CrPC though, not evidence stricto sensu, such statement can be used for or against the accused in view of sub-Section (4) of Section 313, CrPC. Therefore, the evidence of P.W.4 and P.W.5 coupled with the own admission of the appellant in his statement recorded under Section 313, CrPC clearly established that the injury sustained by the victim

was inflicted by the appellant. The medical evidence further reinforced the evidence of P.W.4 and P.W.5 with regard to the weapon used and that the injury was inflicted by none other than the appellant himself.

11. Though a defence is sought to be raised by the appellant to the effect that, the injury to the victim was caused accidentally and he did not have any intention to assault his wife, no evidence could be brought on record to substantiate the stand taken by the appellant with regard to presence of Joy Dhar at the place of occurrence. We are aware of the legal proposition, that it is not necessary for the appellant to adduce any direct or positive evidence to establish his defence. The same can also be proved by the evidence and material brought on record by the prosecution. But we find nothing in the record to substantiate the plea taken by the accused during examination under Section 313, CrPC with regard to the presence of Joy Dhar. Therefore, in our considered view the evidence of P.W.4 and P.W.5 as well as the medical evidence coupled with the statement of the victim recorded under Section 313, CrPC leaves no room for doubt that the appellant inflicted the injury to the victim which caused her death. What is, however, evident from the records and the evidence of P.W.4 and P.W.5 is that there was a quarrel between the husband and wife. In the statement recorded under Section 313, CrPC also the appellant admitted that there was quarrel between him and the victim. The admission of the accused and the explanation put forward by him regarding the cause of quarrel ensued between them, coupled with the testimony of the P.W.4 and P.W.5 demonstrate that the appellant inflicted the injury to his wife with the rod which was available in his house in course of quarrel at the heat of passion. Evidently, the appellant did not give the second blow. The nature of weapon used, single blow given and that there was quarrel which led to the assault, speaks loud and clear that there was no intention on the part of the accused to cause death of the victim being his wife or to cause such injury as to likely to cause her death. Evidently, the injury was inflicted in course of quarrel at the heat of passion. Therefore, the present case in our considered view squarely comes within the sweep of Exception 4 to Section 300, IPC and, as such, the offence committed by the accused by inflicting the injury to his wife, which caused her death comes only within the definition of culpable homicide not amounting to murder. When there was no intention to cause death or any intention to cause such injury which is likely to cause death, the conviction under Section

302, IPC recorded by the learned Sessions Judge cannot be sustained.

12. Accordingly, we set aside the conviction of the appellant recorded under Section 302, IPC. Instead, we convict him under Section 304 Part II, IPC. It reveals from the record that the appellant has been in jail for about 7 (seven) years and, as such, we are of the view that the period which the accused had already undergone in custody would commensurate with the gravity of offence. Accordingly, we modify the sentence of imprisonment and sentence the appellant to imprisonment for the period which he has already undergone during the investigation and trial. We also reduce the default sentence for non-payment of fine to 15 days. Upon due payment of fine or after completing the default sentence, the appellant shall be released if not required in any other case. The appeal stands partly allowed.

13. Appreciating the assistance rendered by Dr. B.N. Gogoi, learned Amicus Curiae, we hereby provide that he will be entitled to Rs. 7,500/- as professional fee, which shall be paid to him by the Gauhati High Court Legal Services Committee upon production of a copy of this judgment.

14. Send down the LCR.

**JUDGE**

**JUDGE**

**Comparing Assistant**