

Tripura High Court

Sri Augustine Hrangkhal vs The State Of Tripura on 18 May, 2022

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HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
CrL.A(J). No. 44 of 2020

Sri Augustine Hrangkhal, son of late Peter Hrangkhal, resident of Village- Debthang Para, P.S. Teliamura, Khowai, District: Khowai Tripura.

..... Appellant

-V E R S U S-

The State of Tripura.

..... Respondent.

B_E_F_O_R_E HON'BLE MR. JUSTICE T. AMARNATH GOUD HON'BLE MR. JUSTICE ARINDAM LODH For Appellant(s) : Mr. H. K. Bhowmik, Advocate.

For Respondent(s)	:	Mr. R. Datta, P.P.
Date of hearing & delivery of judgment and order	:	18.05.2022
Whether fit for reporting	:	NO

JUDGMENT & ORDER

[T. Amarnath Goud, J]

Heard Mr. H. K. Bhowmik, learned counsel appearing for the convict- appellant. Also heard Mr. R. Datta, learned Public Prosecutor, appearing for the respondent-State.

[2] Challenge here is the judgment and order of conviction and sentence dated 07.01.2020, passed by the learned Sessions Judge, Khowai, Tripura in Case No. S.T. (T-1) 17 of 2018, whereby and whereunder the appellant was convicted and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- (Rupees ten thousand) only, with default stipulations for the offence punishable under Section-302 of IPC. This is a case where son killed father and mother being the eye witness deposed against the son and accordingly, he is convicted.

[3] The fact of the case, in a nutshell, is that on the basis of a written complaint lodged by the informant namely Smt Radhashri Hrangkhal (the wife of the deceased) stating inter-alia that on 28.09.2017 at about 2000 hours when she came to her house from the nearby market, at that time, she found that the door of their dwelling hut was closed and accordingly, she came forward and found her younger son namely, Augustine Hrangkhawl was beating upon her husband namely, Peter Hrangkhal by one wooden piece (guava tree) and as a result, her husband was lying on the floor and

on seeing this the complainant started shouting but, the accused threatened her with dire consequences and accordingly, she came out from her house and informed the matter to her neighbors and after return back she found her husband was dead and kept outside the hut. On the next day morning i.e. on 29.09.2017 the local people of their village came to her house and detained the accused.

[4] On the basis of the complaint as stated above, the police of Teliamura P.S. has registered a case bearing registration No. Teliamura P.S. Case No.2017/TLM/0070 dated 29.09.2017 under Section-302 of IPC and the same was endorsed to S.I. Suman Ulla Kazi (PW-10) for investigation and subsequently, it was re-endorsed to SI Sri Raju Bhowmik (PW-11), who after completion of investigation, laid charge- sheet vide No.35 of 2018 dated 31.05.2018 under Sections-302/506 of IPC against the convict-appellant.

[5] Thereafter, the learned Sub-Divisional Judicial Magistrate, Khowai, after taking cognizance of offence under Section 302/506 of IPC transferred the case record to the court of Ld. J.M 1st class, Court No.2, Khowai, Tripura and Ld. J.M 1st Class, Khowai, Court No.2 complied the provision of Section-209, Cr.P.C committed the case to session's court as the case is exclusively triable by the Court of Sessions, Khowai, Tripura after furnishing copies to the accused as required under Section-

207 Cr.P.C. On receipt of the case record by this Court, on 25.07.2018, the learned Court framed charge under Sections-302/506 of IPC against the convict-appellant, namely, Augustine Hrangkhawl explaining the contents of charge to him translating the same in Bengali to which he pleaded not guilty and claimed to be tried.

[6] In order to bring home the charge against the present appellant, the prosecution has examined as many as 12 witnesses and they were duly cross-examined by the defence. Apart from examination of above mentioned witnesses from the side of prosecution, they also relied and exhibited some documents up to Exhibit-1 to Exhibit-11/12 and also Exhibit-M.O. 01 to M.O.4. After closing of the evidence of the prosecution side, the appellant herein was examined under Section-313 (1) (b) of Cr. P.C., to which he denied all the incriminating materials in prosecution evidence and also declined to adduce evidence in defence.

[7] Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence, this appeal has been preferred by the convict-appellant.

[8] Mr. H. K. Bhowmik, learned counsel appearing for the convict-appellant has submitted that the learned trial Court has erred both in law and facts and accordingly, arrived at a wrong conclusion for which the impugned judgment and order of conviction and sentence is liable to be set aside. He has further submitted that the learned trial Court without appreciating the evidences as a whole has arrived in a conclusion in very mechanically whereby, the appellant was found guilty.

[9] The Court has only evolutes the evidence of prosecution side but the evidence of defence was not evaluated for which the learned court below has failed to reach in a right finding. As per impugned judgment in para-6, the learned court below has taken two points for determination but, in

appreciation of evidence, the court below has miserably failed to connect the evidences to decide the issues beyond reasonable doubt.

[10] Mr. Bhowmik, learned counsel has further contended that it is evident from the evidence of PW-1 i.e. the complainant that except herself nobody was the eye witness of the alleged crime. It is also on record that there were good numbers of witnesses who were the relatives but, the independent witnesses those names have been referred by the court below, tasking consideration discrepancies in the evidence of the prosecution witnesses, the learned Court below ought to have acquit the present appellant on the ground of benefit of doubt.

[11] The Court below did not consider the alleged offence caused by the appellant upon his father was pre-meditated or that the prosecution has failed to show circumstances in the scenario of commission of offence that the assault was only for committing murder having intention with pre-determination and for that for the sake of argument even other circumstances are taken, in that case also the offence in this case would come under Section-304 (Part-II) of IPC in view of definition of Section- 300 of IPC.

[12] Mr. Bhowmik, learned counsel has submitted that the Court below has not considered the other material contradictions of the evidence and also the report of PW-2, which cannot be taken safely for corroborating the evidence analyzing that the cause of the death of the deceased was the result of assault caused by the appellant with a branch of a tree and for that, the findings of the Court below need to be looked into once again.

[13] Now let us reproduce the material evidence of prosecution witnesses both in their examination in chief as well as in their cross- examination.

[14] PW-1, Smt. Radhashri Hrangkhwal is the complainant of this case. She is also the wife of the deceased and mother of the accused. She deposed before this court that on 28.09.2017 while she returned home at 8.00 p.m., she noticed the door of her dwelling hut was bolted from inside and accordingly, she knocked the door and somehow opened the door and found that her younger son Augustine Hrangkhawl in her dwelling hut being armed with a branch of guava tree and assaulting her husband Piter Hrankhwal and followed by physical assault her husband fallen on the ground. PW-1 further deposed that she raised alarm while Augustine threatened her with dire consequences and finding no other alternative she informed the matter to the local people immediately. PW- 1, further deposed that in the meantime her son i.e. the accused was found to drag the body of her husband outside of the dwelling hut and as a result of such assault her husband died on the spot. PW-1, further deposed that at that time the accused was in intoxicated condition and was also on uncontrolled stage but somehow the local people managed to detain him. PW-1 further deposed that local people tied the accused with a rope and informed the matter to the police and the accused inflicted self injury over his head, striking his head on a brick. PW-1 further deposed that previously the accused also assaulted her and her husband on many occasion and he was in jail custody for a considerable period and she (complainant) also lodged the oral ejahar with the police which was reduced into writing by one police officer of TLM PS. PW-1 identified her complaint petition and her signature before the court.

[15] PW-1 further deposed that during investigation police seized the branch of guava tree by which the accused assaulted her husband. The branch of tree seized was having some blood stained. PW-1 further deposed that police also seized some blood stained soil and also collected blood with a piece of gauge in which she stood as witness and also identified the same before the court. PW-1 further deposed that police also prepared the inquest report over the dead body of her husband in the spot in their presence and she put her signature on it and also identified the same before the court. PW-1 identified the accused before the court. During her cross-examination she stated that there are few houses adjacent to her house and another son is a teacher and living separately at Mandai. Rest part of her cross-examination is consists of bare denials put by the Ld. Defence Counsel based on her above evidence.

[16] PW-2, Smt. Rupali Majumder (Scientific officer-cum Asst. Chemical Examiner, TSFSL, Govt. of Tripura) deposed before this court that on 29.11.2017 she was posted as Scientific Offer-cum-Asst. Chemical Examiner, Govt of Tripura, TSFSL, Narsinghar, Agartala and on that day SDPO, Teliamura forwarded one parcel in intact and tailed with specimen seal vide memo no. 10945/SDPO/TLM, dated 28.11.2017 in connection with the present case. PW-2 further deposed that the samples were handed over to her by their Director for examination and accordingly, she examined the same. The exhibits were subjected to chemical test and immunological test. The result based on the tests are (I) Blood stain of human origin were detected in Exhibits A-1,A-2,A-4 and B-1,B-2. (ii) Blood group of all the exhibits was "B". After examination she prepared the report which bears her signature and also identified the same before the court.

[17] PW-3, Sri. Tenzing Hrangkawal deposed before the court that last year one day upon receipt of the information that Peter Hrangkhawl was beaten to death by Augustine Hrangkhawl, he went to the house of Peter Hrangkhwal and found the dead body of Peter, polled with blood in his dwelling hut. PW-3 further deposed that the accused was also found there under influence of liquor and was tied with a rope. PW-3 further deposed that Radhashri Hrangkhwal, the wife of the deceased was also found there at the material time and huge number of people found gathered in their house. PW-3 further deposed that he heard from the local people gathered there that Peter was beaten to death by Augustine with a lathi and Augustine was addicted to alcohol and he was also a ill tempered young boy. PW-3 further deposed that the accused had often quarrel and scuffling with his father over fetching money and previously on many occasion the accused assaulted his parents over the issue of fetching money and 2/3 cases were also instituted against the accused. PW-3 identified the accused before the court.

[18] PW-4, Sri. Rabi Debbarma (constable No. 12427) deposed before the court that on 29.09.2017 he was posted at Teliamura PS and on that day he brought the dead body of Peter Hrangakwal to Teliamura hospital after inquest over the dead body.

[19] PW-5, Dr. Ajitesh Paul (Scientific officer-cum-Asst. Chemical Examiner, TSFSL, Govt. of Tripura) deposed before the court that on 12.12.2017 he was posted as Scientific Officer-cum-Asst. Chemical Examiner, Govt of Tripura, TSFSL, Agartala and on that day SDPO Teliamura forwarded one parcel in connection with the present case and on that day he received two paper envelops. PW-5 further deposed that he examined the said parcel and found that Exhibits No.A-2 and A-3 it

could reveal that both the soil samples were of similar nature and after that he returned back the remnants /Exhibits to Bio/Sero Division of TSFSL in a sealed cover and after examination he prepared the report by his official computer which bears his signature and also identified the same before the court.

[20] PW-6, Sri. Satta Kr. Hrangkhal deposed before the court that on 29.09.2017 police seized a branch of guava tree, some blood stain soil and some blood sample collected in gauze cloth in his presence and he stood as witness and also put his signature on it. PW-6, further deposed that on the same day I.O. also seized the wearing apparels of the deceased besides blood sample under a proper seizure-list and in that seizure-list he also stood as witness and put his signature and later on he identified the same before the court. PW-6 further deposed that on 29.09.2017 at about 07.00 am upon receipt of the information that Peter Hrankhwal was beaten by a branch of a guava tree by his son Augustine Hrangkhawl and found the dead body of Peter with some bleeding injuries on his head and other parts of his body. PW-6 further deposed that he came to know from the people present there and from the mother of the accused who is also the wife of the deceased that Peater was beaten by her son Augustine and thereby he died on the spot in their house. PW 06 further deposed that accused was detained by him and others and also tied with a rope and subsequently handed over to the police. PW 06 identified the accused before the court.

[21] PW-7, Sri. Bhaktaram Hrangkhal deposed before the court that on 29.09.2017 his brother Peter Hrangkhal was murdered by Augustine Hrangkhawl as the accused assaulted his father by a lathi and after the incident the wife of his elder brother reported him over telephone about the incident. PW-7 further deposed that thereafter, he went their house and found the dead body of his elder brother Peter was lying in his house with some bleeding injury over his head, forehead hand, leg and other parts of his body. PW-7 further deposed that local people detained the accused immediately after the incident and he found that the accused was tied with a rope in the courtyard and the accused was arrogant and threatened them with dire consequences. PW-7 further deposed that police also come there after the incident and the inquest report was prepared over the dead body of Peter and in that inquest report he stood as witness and put his signature and identified the same before the court. PW-7 further deposed that the branch of a tree by which his brother was assaulted by his son Augustine was also found laying therein the courtyard and police seized the same under a seizure-list in presence of them and also identified the same before the court. PW-7 further deposed that accused was demanded money from his father for the purpose of drinking alcohol and other intoxicant but his father denied to pay any money to his son Augustine and for which his son Augustine i.e. the accused beaten his father severely.

[22] PW-8, Sri. John Paul Hrangkhal deposed before the court that he was residing at Mandai in the year of 2017 and on 29.09.2017 his father Peter was murdered by his younger brother namely, Augustine as his brother assaulted his father with a lathi and after the incident his mother reported him over telephone about the said incident. PW 08 further deposed that thereafter he returned home at Debthang Para and found the dead body of his father was lying in their house with some bleeding injuries over his head, forehead, hand, leg and other parts of his body. PW 08 further deposed that local people detained his younger brother Augustine i.e. the accused immediately after the incident and he found Augustine was tied with a rope in the courtyard. PW 08 further deposed

that accused was so much arrogant at the material time and that the accused went beyond conscious and threatened them with dire consequences and, thereafter, police also came there after the incident and inquest report was prepared over the dead body of his father. PW-8 further deposed that in that inquest report he stood as witness and also put his signature on it and also identified the same before the court. PW-8 further deposed that his mother also reported him that his younger brother i.e. Augustine beaten his father with a branch of a guava tree which was subsequently seized by the police in their presence and the branch of that guava tree by which the accused assaulted his father was also found lying therein the courtyard. PW-8 further deposed that accused was having addiction of drugs, alcohol, ganja etc and accused demanded money from his father for the purpose of consumption of drugs and other intoxicant and as his father denied to pay any money his brother Augustine beaten severely his father with the said guava tree. PW 08 further deposed that after postmortem police seized blood stain wearing apparels i.e. one full sleeve check shirt, one sandaw ganjee and pachra of his father along with the blood sample collected from the body of his father in a gauge cloth under a proper seizure list and in that seizure-list he stood as witness. PW 08 identified his brother Augustine before the court.

[23] PW-10, S.I Suman Ullah Kazi deposed before the court that on 29.09.2017 he was posted as sub-inspector of police at TLM PS and on that day at about 11.35 hrs he reduced into writing one complaint of Sri. Radhasri Hrangkhal and after completion of writing he read over the same and the complainant put her signature on it. PW-10 further deposed that since the offence was cognizable in nature he took up the investigation on the spot and at about 11.00 hrs there was an information given by one Satya Kr. Hrankkwal in TLM PS that accused killed his father in his house. PW 10 further deposed that he went out of the PS vide PS GDE no. 12 dated, 29.09.2017 and as such in the PO he prepared the hand sketch map with separate index and also identified the same before the court. PW 10 further deposed that he also seized the branch of guava tree by which the accused assaulted his father and seized the same under a seizure-list, also seized blood stained mud from the P.O. along with some normal mud and some sample of blood in gauze cloth under a seizure-list. PW-10 further deposed that by a separate seizure-list he also seized one full slip check shirt, one blood stain exercise ganjee, one pachra and the blood sample of Peter Hrangkhal in a gauze cloth which was collected by Dr. Norma Debbarma at the time of conducting PM examination. PW-10 further deposed that he also prepared inquest report over the dead body, also recorded statement of the available witnesses U/s.161 of Cr.P.C, arrested the accused and produce him before the court. [24] PW-10 further deposed that he also received the FIR form the informant, collected PM examination report, also sent the collected sample to the TSFSL for scientific examination.

[25] PW-12, Dr. Norma Debbarma deposed before this court that on 29.09.2017 he was medical officer of TLM sub-divisional hospital and on that day postmortem examination was held over the dead body of one Peter Hrangkhal in the hospital morgue and he conducted the postmortem examination. During post-mortem examination he found split laceration, present on the left side of forehead 2 cm from the lateral angle of left eye extending up to the temporal bone size 3 cm x 2 cm x 2 cm. Left orbital bone fracture. PW-12 further deposed that after examination he prepared the PM examination report which bears his signature and also identified the same before the court.

[26] Learned Public Prosecutor in his argument submits to the court that this is a clear case of murder. The attitude shown by accused in the commission of offence clearly indicates his intention. According to him in a chain the prosecution witnesses corroborate the evidence of each other. Admittedly a good number of witnesses are relative witnesses but at the same time there are independent witnesses who described the incident in toto. So there is nothing on record to disbelieve their above evidence. Apart from this the medical evidence is also supporting the evidence of eyewitnesses. The evidence of scientific officer is also in aid to prosecution case. So his final submission is that the prosecution able to prove their case beyond all reasonable doubt and the accused is liable to be convicted u/s 302 of IPC.

[27] It is fact that in this case from the side of prosecution they have examined as many as 12(twelve) witnesses and out of the aforesaid 12 witnesses PW-1 who is the mother of the accused is the eye witness of the occurrence. Her evidence is corroborated by other two material witnesses. On analyzing the evidence of all these witnesses it is clear that the accused assaulted his father who is the deceased of this case by a branch of a tree and the said branch of tree also seized by police. The report of scientific expert as well as the medical officer who conducted the PM examination over the dead body of the deceased clearly indicates that due to assault by the branch of tree the deceased died.

[28] From the evidence of PW-1 it is clear that by bolted door from inside the accused started assaulting the deceased. Seeing this she raise alarm but the accused threatened her. Finding no other alternative she informed the local people but in the meantime the accused drag the body of deceased outside of the dwelling hut. The aforesaid manner of assault as stated by PW-1 indicates that the accused assaulted the deceased till his death by a branch of tree in vital part of the body like head.

[29] It is settled proposition of law that the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. Thus the court must read the evidence of a witness as a whole, and consider the case in light of the entirety of the circumstances, ignoring the minor discrepancies with respect to trivial matters, which do not affect the core of the case of the prosecution. The said discrepancies as mentioned above by the learned counsel appearing for the appellant, should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole.

[30] In our ultimate analysis and having regard to the evidences on record, it is crystal clear that there is no doubt that the question of sentence is a matter of discretion and such discretion has to be exercised along with accepted judicial lines. To impose adequate punishment according to law is not only the duty of the Court, but it is social obligation clearly enjoined upon it keeping in mind not only the crime but also the criminal. In the case in hand, the convict proved to have committed the offence as indicated above and as such his plea of innocence cannot have any significance.

[31] For the reasons stated above, we do not find any infirmity in the findings arrived at by the learned Sessions Judge while convicting and sentencing the accused-appellant. Accordingly, the

judgment and order of conviction and sentence as declared by learned Sessions Judge is affirmed and upheld. Thus, the present appeal preferred by the convict- appellant stands dismissed. As a sequel, miscellaneous applications pending, if any, stands closed.

Send down the LCRs forthwith.

JUDGE

JUDGE

A. Ghosh