

IN THE COURT OF SESSIONS JUDGE::AT GOALPARA

Present:- T.K. Bhattacharjee, AJS.
Sessions Judge, Goalpara.

Session Case No. 74/18

State of Assam.

-Versus-

Bashi Ram Boro Accused.

Appearance :

Mr. B.K. DAs, learned Public Prosecutor for the State.

Mr. Mr. J. Das, learned Adv. for the accused.

Dates of evidence: 9.8.2018, 6.9.2018, 4.10.2018, 30.10.2018,
14.11.2018, 28.11.2018, 19.1.2019,
3.5.2019,13.8.2019, 27.8.2019, 24.9.2019.

Date of Argument:0 6.01.2020 & 18.02.2020.

Date of Judgment: 03.03.2020.

-J U D G M E N T-

1. The facts of the prosecution case, as unfurled from the ejahar, is that on 17.10.2017, at about 6-00pm, at village Jhanjipara, under Lakhipur Police Station, the accused person trespassed into the compound of Kameswar Boro, the Jetha (uncle) of the informant, armed with a dao and assaulted Kameswar Boro and his wife Thangring Boro and injured them and hence, the case was filed.

2. On receipt of information to that effect, police registered Lakhipur PS Case No.371/17 u/s 447/326/307 of the IPC and after the investigations were completed, the police submitted a charge-sheet u/s 447/326/307/302 of the IPC against the accused sending him up for trial. On perusal of the charge-sheet which was brought

on record as the Ext.9, it is found that one of the victim, namely Thangring Boro succumbed to her injuries on the following day of the occurrence at the Goalpara Civil Hospital.

2. Thereafter, on appearance of the accused before this court, after the committal formalities were completed, charges u/s 447/326/307/302 of the IPC were framed against the accused vide order dated 12.7.2018 and the contents of the said charges were read over and explained to the said accused person to which he pleaded not guilty and claimed to be tried. Subsequently, the charge form was amended vide order dated 6.1.2020 and the name of the victim was corrected from Kameswar Rabha to Thangring Boro which was mentioned erroneously in the charge form while framing the fourth charge.

3. In the course of trial, thirteen witnesses were examined in support of the prosecution case including one of the victims, namely Kameswar Boro, the Medical Officers, the Investigating Officers etc. and after the prosecution evidence concluded, the examination of the accused person u/s 313 of the Cr.P.C was conducted and his statements were recorded during which he declined to adduce any evidence in his defence.

4. Thereafter, the arguments of the respective learned counsels of both the sides were heard and the entire materials available in the case record was carefully perused in order to determine the matter at hand.

5. **Points for determination:**

(i) Whether on or about the 17.10.2017, at about 6-00pm, at village Jhanjipara, the accused Bashi Ram Boro criminally trespassed

into the house complex of Kameswar Boro with intent to kill him and his wife as alleged?

(ii) Whether on or about the same date, time and place, the said accused voluntarily caused grievous hurt to Kameswar Boro and his wife Thangring Boro by means of a dao which is a sharp weapon as alleged?

(iii) Whether on or about the same date, time and place, the accused assaulted Kameswar Boro and his wife Thangring Boro by means of a dao with such intention and under such circumstances that if by that act he had caused the death of Kameswar Boro and Thangring Boro, he would have been guilty of murder and thereby committed an offence punishable u/s 307 of the IPC as alleged?

(iv) Whether on or about the same date, time and place, the accused committed murder by intentionally causing the death of Thangring Boro as alleged?

DISCUSSION, DECISION AND REASONS

6. The PW1 was the informant who had filed the Ext.1, the ejahar, vide which the police were informed about the occurrence and from his testimony, it is found that he heard hue and cry in the house of the victim Kameswar Boro and went there and saw Kameswar Boro and his wife in an injured condition prior to which the accused had come to his house and wanted to catch him but he ran away. The PW1 further deposed that Kameswar Boro disclosed to him that he and his wife were cut by the accused. His cross examination shows that he did not see the assault upon Kameswar Boro and his wife and though he denied that he did not state before police that Kameswar Boro disclosed to him that he and his wife were cut by the accused but the testimony of the PW13, the Investigating Officer, shows that this fact of the victim Kameswar Boro disclosing to this witness that the accused had cut Kameswar

Boro and his wife were not stated by this witness namely Amal Boro to the Investigating Officer (PW13).

7. The PW2 was the Gaoburha of the village where the alleged occurrence took place and he had gone to the house of Kameswar Boro on being informed about the assault upon Kameswar Boro and his wife and on going there, he found Kameswar Boro and his wife lying there with injuries on their persons. The testimony of this witness shows that one dao was seized from the house of one Debendra vide Ext.2, the seizure list. The cross examination of this witness shows that he had not seen the occurrence of assault upon Kameswar Boro and his wife.

8. The PW3 was one Doimali Boro who is the wife of the accused and her testimony does not reflect anything incriminating against her husband, the accused.

9. The PW4 had found Kameswar Boro and his wife in injured condition and he had also noticed that the accused had been apprehended by the police and from his testimony it is found that the wife of Kameswar died due to her injuries. The testimony of the PW1, namely Amal Boro, also shows that police came and apprehended the accused.

10. The PW5 was Hemjit Boro who had heard hue and cry in the house of Kameswar Boro and went there and found Kameswar and his wife lying on the ground in injured condition. According to this witness, both the victims were taken to hospital and subsequently, Kameswar Boro's wife Thangring Boro succumbed to her injuries. This witness, however, did not see how the victims were injured but he was a witness to the seizure of the dao that was made vide Ext.2.

11. The PW6 was Rudra Boro and he too went to the house of Thangring Boro on hearing shouts in their house and on going there, he found Thangring Boro and her husband Kameswar Boro in injured condition. This witness also stated that both the injured persons were shifted to hospital but Thangring Boro succumbed to her injuries. His cross examination shows that when he reached the house of Thangring Boro, the police did not reach there till he was there.

12. The PW7 was one Rakesh Boro and from his testimony it is found that the accused was his uncle and the informant was his elder brother and his mother had died in the occurrence but he was not present at the time of occurrence and did not mention anything else about the occurrence or anything about the accused being involved.

13. The PW8 was one Sarala Boro but she failed to state anything incriminating against the accused and merely deposed that she had seen the dead body of Thangring Boro when the body was being taken to the house from the hospital.

14. The PW9 was the Medical Officer who had examined the dead body of Thangring Boro and found multiple lacerated injuries all over the body of various sizes and also multiple bruises all over the body and incised wound by sharp weapon on the back of neck, both shoulder joints, both arms, on left elbow etc. and from his report, the Ext.3, as well as his testimony, it is found that the death was due to severe shock and haemorrhage following multiple injuries all over the body which were ante mortem in nature and the time since death was about 20 hours. His cross examination reveals that the

injuries in the inquest report do not tally completely with his medical report, the Ext.3 and further, this witness had found the dead body without any clothes. The inquest report was brought on record as the Ext.8.

15. The PW10 was the Medical Officer who conducted a medical examination upon the victim Kameswar Boro on 17.10.2017 at about 10-00pm at the Goalpara Civil Hospital and he found deep cut injury over left side of neck and over right forearm and his medical report was brought on record as Ext.4. His cross examination reveals that the injuries were caused by sharp weapon. His testimony also shows that the victim was hospitalized at the Goalpara Civil Hospital and that the patient was referred to Gauhati Medical College Hospital but the party refused to proceed.

16. The PW11 was the victim Kameswar Boro and from his testimony, it is found that the accused is from his village and that one day, at about 6-00pm, the accused came to their house with a dao and attacked his wife Thangring Boro and when he intervened, the accused also attacked him and struck him on his neck, forearm and forehead due to which he fell down and lost consciousness. He also deposed that his wife had died due to the assault and he was hospitalized. His cross examination reveals that it was dark at that time and there was no light and that other people did not see the incident. This witness also stated in his cross examination that he did not see how his wife was cut. He further stated that his eyesight is weak and he does not see properly in the dark. On perusal of the Ext.4, it is found that the injuries upon this witness in his neck and forearm as stated by him was supported by the medical report, the Ext.4.

17. The PW12 was another Medical Officer who was posted at Lakhipur BPHC and who also examined the victim Kameswar Boro on 17.10.2017, at about 7-30pm which was prior to the examination of the said victim at the Goalpara Civil Hospital and this witness had found deep cut injury on the neck of the victim, cut injury in both forearms, cut injury on the forehead, scalp and skull and according to him, the patient was in a critical stage and was referred to Goalpara Civil Hospital. The medical report of this witness was brought on record as the Ext.5.

18. The PW13 was the police official who took part in the investigation of this case and from his testimony, it is found that on the very date of occurrence, the ejahar was received at the Lakhipur Police Station and thereafter, Lakhipur PS Case No.371/17 was registered and this witness took up the investigations and he visited the place of occurrence on the date of occurrence itself with his staff and he examined the witnesses, prepared sketch map vide Ext.6, seized a dao from the possession of the accused Bashi Ram Boro vide Ext.2 and arrested the accused and took steps for inquest and post mortem on the dead body of the victim Thangring Boro. His testimony also shows that he seized one saree vide Ext.7 and he had sent the other victim Kameswar Boro for treatment and subsequently, this witness submitted a charge-sheet against the accused u/s 447/326/307/302 of the IPC vide the Ext.9. His cross examination shows that the case was registered soon after the occurrence and when this witness visited the place of occurrence, he did not find the victim there but he found blood stains in the courtyard and near the well but samples of blood were not collected by him. His cross examination also shows that the seized dao was not sent for expert examination and nor the seized saree was sent for any expert examination. This witness also did not

collect any finger prints. His cross examination further reveals that the inquest was conducted by an Executive Magistrate.

19. The prosecution side did not examine any other witnesses and from the materials available in the case record, it is found that the accused did not state anything significant during his statement u/s 313 Cr.P.C. and merely stated that he is innocent and that the allegations were false.

20. During the arguments, the learned Public Prosecutor submitted that the testimony of the victim and other witnesses is reliable which shows that the accused was involved in the occurrence and as such, the prosecution has established its case successfully.

21. On the other hand, the learned counsel for the accused submitted that the prosecution case is full of loopholes, discrepancies, infirmities and moreover, the seized materials were not sent for expert examination and report and further, no independent witnesses have come forward to support the prosecution story which facts are vital to the prosecution case and as such, the accused deserves to be acquitted.

22. On a careful scrutiny of the entire materials available before me, it is found that charges u/s 447/326/307/302 of the IPC were framed against the accused and thereafter, the trial commenced during which the above mentioned witnesses were examined but the PW2, PW3, PW5, PW6, PW7 and the PW8 did not mention anything incriminating against the accused but, however, some of these witnesses had found Kameswar Boro and his wife lying injured on the ground and from the testimony of the witnesses it is crystal

clear that the victim Kameswar Boro and his wife sustained injuries on their persons as a result of which Thangring Boro, the wife of Kameswar Boro, had died. However, from the testimony of PW1 and the PW4, it is found that the accused was apprehended by the police at the place of occurrence and from the testimony of the PW11, the victim Kameswar Boro, it is conspicuous that the accused Bashi Ram Boro came to their house with a dao and attacked his wife and when he intervened, he was also struck on his neck, forearm and forehead. The narration in his examination-in-chief by the victim Kameswar Boro was not specifically challenged during cross examination and neither the presence of the accused at the place of occurrence was denied or challenged and though the evidence reveals that it was dark at that time and there was no light and further, the eyesight of the victim was weak and he does not see properly in the dark but there is nothing to indicate that his eyesight was so weak during the occurrence that he could not identify the accused who is apparently a person from the same village and known to the victim. On the other hand, the Ext.5 lends support to the testimony of the victim Kameswar Boro and the Ext.4 also shows that the victim was hospitalized at the Goalpara Civil Hospital with cut injuries on his neck, forearm etc. The Ext.4 also reveals that the victim Kameswar Boro was assaulted with a sharp weapon and he sustained grievous injuries on his person and from the Ext.5, it is also found that the said victim was found to be in a critical stage for which he was referred to Goalpara Civil Hospital where he was subsequently admitted but however, the victim Kameswar Boro did not specify the nature and extent of the injuries sustained by him during his deposition in the court and further, the Ext.4 and the Ext.5 do not reflect that the injuries sustained by the victim Kameswar Boro was within the ambit of Section 320 of the IPC which defines "grievous hurt". A careful scrutiny of the Ext.8, the

inquest report, shows that the deceased/victim Thangring Boro was found with injuries on her neck area, shoulder and also there were multiple injuries on her person and from the post mortem report, the Ext.3, it is found that the deceased Thangring Boro was found with injuries on the neck, shoulder and other parts of her body and from the above facts and circumstances, it is conspicuous that both the victims Kameswar Boro and his wife Thangring Boro were assaulted with a sharp weapon as a result of which the victim Kameswar Boro was injured and his wife Thangring Boro had lost her life. Apart from that, the Ext.2, the seizure list, reveals that a dao was seized from the accused Bashi Ram Boro on the date of occurrence in the house of Deben Boro and from the testimony of the witnesses, it is apparent that the accused was also apprehended immediately after the occurrence. The Ext.1, the ejahar which was lodged promptly after the occurrence also mentions the name of the accused as the assailant and there is nothing in the evidence on record to indicate that there is any enmity between the parties as a result of which the possibility of false implication is also ruled out. It may be mentioned in this context that in the case of Dayal Singh which was reported in 2012 Criminal Law Journal 4323, the Hon'ble Apex Court observed that there should not be any undue anxiety to only protect the interest of the accused as that would be unfair to the needs of the society but efforts should be made to ensure a fair trial where the accused and the prosecution both get a fair deal. It must be remembered that it is also the onerous duty of the court to find out the actual truth and the prosecution version should not be rejected on the basis of every hunch, hesitancy, insignificant lacunas, procedural technicalities etc. and a certain amount of imbalance in the evidence on record can always be treated to be normal and therefore, taking into consideration, the cumulative effect of the entire evidence before me, I am of the opinion that the

testimony of the PW11 is sufficiently reliable and trustworthy and cannot be ignored without any cogent reasons. It may be mentioned here that to justify a conviction u/s 307 of the IPC, it is not essential that bodily injury capable of causing death should have been inflicted and it is also not necessary that the injury actually caused to the victim should be sufficient under ordinary circumstances to cause death and further, the evidence on record clearly indicates that the accused trespassed into the house complex of the victims and assaulted the victims causing multiple injuries to the victims as a result of which one of the victims succumbed to her injuries and even though the prosecution could not establish the motive of the crime but that by itself is of no effect because in a death case the motive remains essentially known to the deceased and the offender and the prosecution case cannot fail only for want of proof of motive particularly when the prosecution story is supported by the testimony of the other victim who was also assaulted and injured and therefore, taking into consideration the entire facts and circumstances of this case, I am of the opinion that the prosecution has successfully established its case u/s 447/324/307/302 of the IPC against the accused Bashi Ram Boro beyond reasonable doubt.

23. In the result, the accused Bashi Ram Boro is found guilty u/s 447/324/307/302 of the IPC beyond reasonable doubt and therefore, he is now to be dealt with in accordance with law.

24. I have heard the accused on the point of sentence and he has stated that he belongs to the economically weaker section of the society and that he is having a wife and two sons one of whom is married and he prayed for mercy.

25. The statement of the accused is recorded in a separate sheet and attached with the case record.

26. Now, therefore, after taking into account all the facts and circumstances of this case and also the statement of the accused, the said accused is hereby convicted u/s 447/324/307/302 of the IPC and accordingly, the accused is sentenced to suffer simple imprisonment for one month u/s 447 of the IPC, he is further sentenced to suffer simple imprisonment for one year u/s 324 of the IPC, he is further sentenced to suffer simple imprisonment for ten years and to pay fine of Rs.3,000/-, in default of payment of fine, to suffer simple imprisonment for six months u/s 307 of the IPC and he is also sentenced to suffer imprisonment for life and also to pay a fine of Rs.7,000/- only, in default of payment of fine, to suffer simple imprisonment for six months u/s 302 of the IPC. The total fine amount of Rs.10,000/-, if realized from the convict, shall be deposited in the appropriate head. All the sentences shall run concurrently. The period of detention already undergone by the accused in judicial custody shall be set off.

27. The seized materials shall be destroyed in due course of law after the appeal period is over.

28. A free copy of the judgment shall be furnished to the convict forthwith.

29. A copy of the judgment shall be forwarded to the learned District Magistrate, Goalpara and also to the Secretary, District Legal Services Authority, Goalpara for the purpose of determination and payment of any compensation that may be payable to the victim Kameswar Boro along with all relevant particulars.

Given under my hand and seal of this court on this 3rd day of March, 2020.

(T.K Bhattacharjee)
Sessions Judge, Goalpara

Dictated & corrected by me:

Sessions Judge
Goalpara

Appendix:

Prosecution Witnesses:

PW1:- Amal Boro,
PW2:- Nileswar Basumatary,
PW3:- Smt. Doimali Boro,
PW4:- Rajib Boro,
PW5:- Hemajit Boro,
PW6:-Rudra Boro,
PW7:-Rakesh Boro,
PW8:-Sarala Boro,
PW9:- Dr. Dost H. Rahman (MO),
PW10:- Dr. Upamoy Nath(MO),
PW11:- Kameswar Boro,
PW12:- Dr. Mizanur Rahman,
PW13:- Alibur Rahman (IO).

Court witnesses:-Nil.

Prosecution Exhibit:

Ext.1:- Ejahar,
Ext.2:- Seizure list,
Ext.3:- Post mortem report,
Ext.4:- Injury report,
Ext.5:- Injury report,
Ext.6:- Sketch map,
Ext.7:- Seizure list,
Ext.8:- Inquest report,
Ext.9:- Charge-sheet

Defence Witness: Nil.

Sessions Judge
Goalpara