

Cr1.A. 87/2003  
BEFORE  
HON'BLE MR. JUSTICE D.BISWAS  
HON'BLE MR. JUSTICE HRISHIKESH ROY

D.Biswas, J

This appeal is directed against the judgment dated 3.2.2003 passed by the learned Sessions Judge, Cachar, Silchar in Sessions Case No. 83/2000 arising out of GR Case No. 191/2000 convicting the appellant Sri Jibanlal Koiri under Section 302 IPC and sentencing him to suffer imprisonment for life and to pay a fine of Rs. 20,000/-, in default to further rigorous imprisonment for three months.

2. We have heard Mr JM Choudhury, learned counsel appearing on behalf of the appellant and Mr BS Sinha, learned Public Prosecutor, Assam.

3. P.W.4 Sri Audh Prasad Koiri lodged an ejahar before the Officer-in-Charge, Dholai Police Station informing that on 12.12.98 day around 12 noon when his cousin Muralidhar Koiri (since deceased) was working in his vegetable field, accused Jibanlal Koiri entered his field with a spade in his hand and started an altercation with him and in the process dealt a blow on Muralidhar's head with the spade injuring him grievously.

3. On receipt of the aforesaid ejahar, Dholai P.S. Case No. 298/98 under Section 447/326/307 IPC was registered. The police after registration of the case took up investigation and, on completion thereof, submitted chargesheet against the appellant and three others under Section 302/34 IPC for causing death of Muralidhar Koiri intentionally.

4. On commitment by the learned Magistrate, the learned Sessions Judge framed charge against the appellant under Section 302/34 IPC. The charge was read over and explained to the appellant, to which he pleaded not guilty and claimed to be tried.

5. As many as thirteen P.Ws and one D.W were examined by the learned Sessions Judge. After examination of the accused-appellant under Section 313 CrPC and hearing the argument, the impugned judgment was pronounced convicting and sentencing the appellant as stated hereinbefore.

6. P.W.11 Dr. Homeswar Sarma performed the post mortem examination on the dead body of the deceased. The injuries found by the doctor are as follows :-

Injury :-

1. Diffuse swelling of dorsum of left hand with a lacerated wound 1.5 x 2 cm x dermis deep in mid part irregular in shape (defence wound).

2. A stitched wound over right parietal scalp at the ear level 3 cm away from mid line measuring 4.5 cm with irregular shape in anteroposterior direction. On reflection hamotome with swelling of the whole scalp.

3. A circular depressed comminuted fracture of the right parietal bone 5.5 cm in diameter under the scalp injury extends from 2 cm away from mid line. There is fissured fracture of the right temporal bone extending from the lateral border of the depressed fracture 7 cm and another anteriorly extending to parietal and frontal bone 6 cm long.

4. Meninges incised under the depressed fracture and under temporal bone fissured fracture.

5. There is epidural subdural and subarachnoid haemorrhage over the right cerebral hemisphere.
6. The brain is incised 1 cm deep exactly under injury No.4.
7. There is contusion of the right parietal lobe. .

In the opinion of the doctor, the death was due to coma resulting from ante-mortem head injuries. The evidence of the Medical Officer read with the inquest report conclusively prove that Muralidhar Koiri died of the ante mortem head injury sustained by him.

7. P.W.1 Manik Chauhan in his evidence stated that the deceased was in his vegetable garden and he saw from a distance that both the accused/appellant and the deceased were engaged in an altercation. This witness could not ascertain the reasons for such altercation. Both of them were armed with spades. They engaged themselves in a mutual fight pushing one and the other. One Chand Govin came to the place of occurrence and tried to separate them, but failed. In the process, the accused/appellant dealt a blow on the deceased with the spade in his hand. In his cross-examination, he reiterated the same version and the defence could not elicit anything from him to show that the deceased was unarmed and that the accused/appellant had dealt with the spade blow taking advantage of his helplessness. This shows that the accused/appellant who was in his vegetable garden had a spade with him not for the purpose of killing anyone but for use in the garden.

8. P.W.1 has been supported by P.W.3 Chandan Chauhan in all material points. He came to the place of occurrence on being attracted by the commotion. He stated that he saw the deceased and the accused/appellant striking each other with their respective spades. He further states that before his arrival, the deceased had fallen on the ground and then, out of fear, he fled away from the place of occurrence. In his cross-examination he stated that the occurrence took place due to cutting of a path by the deceased. He further stated that he did not see the other three accused persons at the place of occurrence. The evidence of P.W.1 and P.W.3 could not be assailed by the defence during the course of cross-examination. From the evidence of these two witnesses, we find that the death of Muralidhar took place during the course of altercation and mutual mar-pit with the accused/appellant.

9. The evidence of the other witnesses are on a different footing. P.W.2, P.W.5, P.W.6 and P.W.7 gave a different version of the prosecution case trying to involve all the four accused persons. They did not speak of any mutual fight between the deceased and the accused/appellant. We, therefore, propose to discuss their evidence hereinbelow.

10. P.W.2 Rajnarayan Koiri came to the place of occurrence after hearing a commotion. He stated that he saw that the accused/appellant and three other persons encircled the deceased. This witness asked them not to quarrel. According to this witness, all the four accused persons took part in the mar-pit and, in the process, accused Jibanlal assaulted the deceased with a spade. But in his cross-examination, suggestions were put to him that he did not make any such incriminating statement against all the four accused persons before the Investigating Officer.

11. P.W.5 Sakuntala Koiri, wife of the deceased, stated that she saw all the four accused persons assaulting her husband with different kinds of weapons. Accused/appellant Jibanlal was in possession of a spade, Chunilal a spear and Subachan a huza. She further stated that accused Ramdhan caught hold of her

husband from backside and on being ordered by Chunilal, accused/appellant Jibanlal dealt with a blow on the head of the deceased with the spade in his possession. This witness denied the suggestion put to her during the course of cross-examination to the effect that at the time of occurrence, the deceased was cutting the village path in order to extend the vegetable garden. But she admitted that her husband was in possession of a spade.

12. P.W.6 Ram Baleswar Koiri stated that he went to the place of occurrence on the western side of his house and saw all the four accused persons and the deceased engaged in a quarrel. Chand Govin, his nephew requested appellant Jibanlal not to quarrel and tried to dissuade them. But Jibanlal threw him down and, thereafter, assaulted the wife of the deceased when she appealed to them not to assault her husband. The witness further stated that appellant Jibanlal hit the deceased with a spade. In his cross-examination, he denied that any occurrence relating to cutting of land took place, but admitted that at the time of the incident, the deceased was cutting earth in his vegetable garden.

13. P.W.7 Chand Govind Koiri and P.W.8 Joyram Koiri narrating the incident indicted the accused/appellant for having assaulted the deceased with a spade. Suggestions were put to them that the evidence given by him during the course of trial is contrary to what they had stated before the Investigating Officer. P.W.12 Rakesh Nath, the Investigating Officer proved the contradictions. He stated that P.W.8 did not tell him that he had seen the assault on the deceased by the accused/appellant but told him that he had seen the deceased lying injured on the ground.

14. The eye witnesses made conflicting statement in their evidence about the role played by the accused/appellant. From the evidence of P.W.1 Manik Chauhan as well as P.W.3 Chandan Chauhan, we find that there was an altercation between the accused/appellant and the deceased which culminated in a mutual fight between the two and both tried to assault each other with the spade in their hand and, in the process, the accused/appellant dealt with a spade blow on the head of the deceased. That the deceased was in possession of a spade at the time of occurrence has also been admitted by the wife of the deceased, P.W.5. Though P.W.6,7 and 8 did not adduce any incriminating evidence against the deceased, yet a conjoint reading of the evidence of all the P.Ws lead us to believe that both the accused/appellant and the deceased were quarrelling and then engaged themselves in a mutual mar-pit in which the accused/appellant dealt with only one blow on the head of the deceased. The injury report (Exhibit-A) tendered in evidence by D.W.1 Dr. Badal Das shows that the accused/appellant who was examined by him on 13.12.98 also sustained simple injuries on his person caused by blunt weapon. The evidence of D.W.1 alternately reinforce the defence version that Muralidhar died during the course of mutual fight between him and the accused/appellant. The other important feature is that the evidence of P.W.8 Joyram Koiri appears to be an embellishment. The Investigating Officer, P.W.12 in clear and unambiguous term states that this witness did not tell him that he had seen the accused/appellant assaulting the deceased.

15. From the discussion made above, we find that Muralidhar succumbed to the injuries caused on his person during the course of an altercation and mutual fight between him and the accused/appellant. Both the deceased and the accused/appellant were armed with spade and they were trying to assault each other. The evidence of D.W.1 Dr. Badal Das who had proved the injuries on the person of the accused/appellant on police requisition further shows that it was not an one sided affair in which the accused had caused the death of Muralidhar by dealing with a spade blow on his head. From this it can be said that the accused/appellant had acted in a fit of passion without any pre-meditation.

16. For reasons above, we are of the considered view that the case at hand falls under Exception-4 to Section 300 IPC and is, therefore, punishable

under Section 304, Part-II IPC. We, therefore, allow this appeal in part, modify the conviction from one under Section 302 IPC to 304, Part-II IPC and, on such conviction, sentence the accused/appellant to undergo imprisonment for five years and to pay a fine of Rs. 5,000/-, in default to further R.I. for three months.

17. Send down the records.