

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

CRL. APPEAL. No. 1/2013

Shri. Hari Bahadur Chettri

..... Accused/Appellant

-Vrs-

The State of Meghalaya

..... Respondent

BEFORE THE HON'BLE MR JUSTICE SR SEN

For the Petitioner : Mr. N.M. Mansuri, Advs.

For the Respondent : Mr. S.Sen. Gupta, Addl. P.P.

Date of hearing : **17.09.2013**

Date of Judgment & Order : **30.09.2013**

JUDGMENT AND ORDER

The instant appeal is directed against the Impugned Judgment and Order dated 22.12.2012 passed by Fast Track Court, Shillong in FTC Case No. (S) 1/2007 under section 304 IPC.

2. The Appellant's case in brief is that the learned court below convicted the accused Hari Bahadur Chettri without any independent witness or eye witness. And convicted the accused for 7 (seven) years imprisonment along with a fine of Rs. 1000/-.

3. Being aggrieved by the said Impugned Judgment and Order, Appellant approached this court by way of this instant appeal.

4. The learned counsel, Mr. N.M. Mansuri appearing for and on behalf of the Appellant argued that in this instant case there were no eye witnesses or based on circumstantial evidence, and circumstantial evidence fails to form chain, but the learned court below failed to appreciate the evidentiary value of the witnesses and just convicting the accused under section 304 IPC. So, the conviction may be set aside and accused may be set free from the custody.

5. On the other hand, Mr. S. Sen Gupta, Learned Addl. P.P appearing for and on behalf of the State argued that from the evidence, it is clear that the accused has killed his wife and Prosecution had succeeded to establish the charge beyond doubt. So, the learned court below rightly convicted the accused. And the appeal may be dismissed.

6. From the record, it appears that the Prosecution to establish the charge before the trial court below has examined as many as 7 (seven) witnesses which are on record from the court below.

7. Now, to answer the question raised by the counsels, let me examine the deposition of the witnesses as recorded by the learned court below:

(i) On perusal of the deposition of P.W. 1, it appears that he had conducted the postmortem on 17.01.2004 on the deceased body of (L) Purne Chettri at Nongpoh, Civil Hospital. From his deposition, it further appears that during postmortem report he found there was hematoma on the frontal region of the head, swelling of the right eye, fracture of left arm, multiple bruises on the face, bruises on the face, bruises on the abdomen,

knees and legs. Besides that, found congestion in the small and large intestine and haemorrhages, liver congestion and kidney congestion. P.W. 1 opined that the cause of death was due to multiple injuries sustained on the head, chest, intra abdominal injuries leading to cardio respiratory failure, and injury caused by a blunt weapon which is homicidal in nature. On perusal of the evidence of P.W. 1 it is clear and understood that it is the case of homicide.

(ii) On perusal of the evidence of P.W. 2 it appears that on 15.01.2004 the convicted/accused Hari Bahadur Chettri and his wife came to their home and after having tea left, and it also further appears that their house is very close to each other. At about 6.30 PM to 7.00 PM on the same day, P.W. 2 heard halla in the house of the accused, so he went there and asked what actually happen, but the convicted replied nothing happen, so he came back to his home. Next morning, he heard that the wife of the convicted expired. Cross declined by the defence counsel.

(iii) From the evidence of P.W. 3 it appears that she also heard halla and quarrelling in the house of the convicted and next morning they came to know that the wife of the convicted died. After analysing the evidences of P.W. 2 and P.W. 3 it appears that the convicted and his wife visited the house of P.W. 2 and P.W. 3 on 15.01.2004 and left for their home after taking tea and at about 6.30 PM to 7.00 PM they heard a loud quarrel in the house of the convicted and next morning they heard the news that the wife expired. So, now as far as the evidence given by P.W. 2 and 3 it is clear that both the convicted and his wife were seen by them on 15.01.2004 in the evening, and after sometime they heard a quarrel in the house of the convicted and next morning heard the news of the death of the wife of the convicted.

(iv) P.W. 4 deposed that she is the sister of the victim and when she arrived to the place of occurrence found that the dead body of her sister was lying inside a locked house and thereafter, police also came and she has filed the FIR and also put her signature on the inquest report, etc and from her evidence, it is clear that the children of the convicted and the deceased used to stay in Nepal. From her evidence, it also appears that the body of the deceased was naked.

(v) From the evidence of P.W. 5 the Officer In charge of the police station simply registered the case and endorsed the case to one Investigating Officer to investigate the matter. So, further discussion of his evidence is not necessary.

(vi) From the evidence of P.W. 6 who recorded the confessional statement of the convicted accused, it appears that she had recorded the confessional statement on 19.01.2004 and from her deposition, it appears that the accused and the victim on 14.01.2004 went to a party at around 9.30 PM and the accused had some liquor with his friend and got intoxicated and left for home at around 10.15 PM. After reaching home, he asked his wife (victim) to prepare chutney as he want to consume more liquor. Since his wife did not prepare the chutney, he got wild and started beating his wife with firewood. After that she went to the bed. Next morning when he woke up he realized that his wife is already dead. Cross declined.

Analysing the evidence of the recording Magistrate as referred above, it is clear that the accused has admitted his guilt and defence did not cross-examined him which shows that the deposition given by the Magistrate has been accepted by the defence.

(vii) P.W. 7 is the Investigating Officer who supported the evidence given by other witness and exhibited certain documents.

8. So, on evaluation of the evidence as discussed above, it is clear that from the evidence of P.W. 1 the doctor that it is the case of homicide caused by a blunt weapon which gets supports from the confessional statement recorded by P.W. 6 who recorded the confessional statement of the convicted who admitted he beat his wife with firewood.

9. Further, from the evidence of P.W. 2 and 3 it is also apparent that they had seen both the convicted and his wife together on the date of occurrence and from their evidence, the fact remains that there was a halla and quarrelling in the house of the convicted, which was located very close to their house and the next morning they heard that the victim expired.

10. After analysing the evidence as discussed above, I do not see any reason to record that circumstantial evidence has not formed a chain, rather, I should say the entire circumstantial evidence shows the guilt or point finger to the convicted alone and none else, besides that the confessional statement recorded by the Magistrate also has evidentiary value because the said confessional statement was not contradicted by way of cross-examination, and that the accused clearly admitted his guilt which tallies with the evidence given by P.W. 1, 2, 3, etc.

11. Therefore, I do not see any reason to interfere with the Impugned Judgment and Order passed by the learned Fast Track Court rather; I say that the learned court below has rightly passed the Judgment and Order.

12. Registry is directed to roll back the Lower Court record to the concerned court along with a copy of the Judgment and Order.

13. Appeal is dismissed and the matter stands disposed of.

JUDGE

D. Nary