

# IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,  
MIZORAM & ARUNACHAL PRADESH)

## ITANAGAR BENCH

*ORAL*  
Judgment & Order

In

Crl. Ref. (H) 01 (AP) 2010  
in  
Crl. Appl. 07(AP) 2006

State of A.P.  
-Vs-  
Bisalu Tayeng

BEFORE

THE HON'BLE MR. JUSTICE I. A. ANSARI  
THE HON'BLE MR. JUSTICE P.K. MUSAHARY

<i>FR</i>	<i>NFR</i>

  
JUDGE

sd

**IN THE GAUHATI HIGH COURT**  
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,  
TRIPURA, MIZORAM & ARUNACHAL PRADESH)  
**ITANAGAR BENCH**

Crl. Ref. (H) 01 (AP) 2010  
in  
Crl. Appl. 07 (AP) 2006

State of A.P  
-Versus -  
Bisalu Tayeng.

BEFORE  
THE HON'BLE MR. JUSTICE I.A. ANSARI  
THE HON'BLE MR. JUSTICE P.K.MUSAHARY

For the State : Mr. I. Basar, Addl.P.P.  
For the convict : Mr. T. Son, A/C  
Date of hearing : 04-01-2011  
Date of judgment and order : 04-01-2011

**JUDGMENT & ORDER**  
(ORAL)

(Ansari, J)

This is a reference made under Section 30 of the Assam Frontier (Administration of Justice) Regulation, 1945, by the learned Additional Session Judge, Fast Track Court, Eastern Zone, Namsai, for confirmation of the conviction of accused, Bisalu Tayeng, and the sentence passed against her, in Namsai P.S. Case No. 19 of 1997, by the judgment and order, dated 18-05-2006, to suffer rigorous imprisonment for a period of seven years with fine of Rs.1000/- and, in default of payment of fine, suffer rigorous imprisonment for a further period of two months.

2. The prosecution's case, as unfolded on the trial, was that on 24-03-1997, at about 0800 hrs, a telephonic information was received by the Officer-in-Charge of Chowkam Police Station that an unknown person was admitted, at Chowkam Public Health Centre, in a serious condition. On verbal enquiry, the Officer-in-Charge was also informed that Bisalu Tayeng (i.e., the accused) had assaulted her husband, Kandi Pegu, with a spade and caused head injury. A General Diary entry was accordingly made. The victim succumbed to his injury, on 24-03-1997, at the said PHC itself. Inquest was held and the *post mortem* examination was also conducted. On completion of investigation, police laid charge sheet, under Section 302 IPC, against the present convicted person, who is widow of the said deceased.

3. During trial, a charge under Section 302 IPC was framed. However, as the accused pleaded not guilty thereto and the trial proceeded. In support of their case, prosecution examined altogether 5 witnesses. The accused was, then, examined under Section 313 Cr.P.C. The trial ended with the finding of guilt reached against the accused under Section 304 Part-1 IPC. The accused has accordingly been convicted and the sentence, as already mentioned above, has been passed against her. Hence, this reference.

4. We have heard Mr. I. Basar, learned Addl. Public Prosecutor, and Mr. T. Son, learned Amicus Curiae.

5. While considering this reference, it needs to be noted that there is, admittedly, no eyewitness to the alleged occurrence of assault on Kandi Pegu (since deceased) at the hands of his wife i.e. accused Bisalu Tayeng. According to the evidence of PW-1, he had merely carried the injured person to the Public Health Centre, but he had no personal knowledge as to how the said person had sustained injury.

6. As far as PW-2 is concerned, his evidence is material inasmuch as his evidence is that in the morning of the day following the day of occurrence, the accused informed him that her husband was serious since last midnight and that her husband had accordingly been shifted to hospital. It is in the evidence of PW-2 that on the request of the accused, he went to the hospital and found the husband of the accused breathing with great difficulty. It is also in the evidence of PW-2 that on noticing the condition of the husband of the accused, he enquired from the husband of the accused the reason for his illness and the husband of the accused told him (PW-2) that he had a quarrel with some other person in his house on the previous night. There is, thus, nothing in the evidence of PW-2 too to show that it was the accused, who had assaulted her husband.

7. Coming to the evidence of PW-4, we notice that according to his evidence, on 24-03-1997, while he was



functioning as Officer-in-Charge of Chowkam Police Station, he received an information from the PHC, Chowkam, that one person in serious condition had been hospitalised there. PW-4 has deposed that he personally visited the PHC. There is nothing in the evidence of PW-4 indicating that he ever found the said deceased alive. Though PW-4 has claimed that he was informed that the said deceased had a quarrel with his wife (i.e., the accused) and that the accused had assaulted her husband by a spade on his head causing injury, this piece of evidence is nothing but hearsay inasmuch as the person from whom the information was received by PW-4 has not been examined at the trial. PW-5, who too is a Police Officer, has merely held inquest over the dead body.

8. Thus, we are left with the evidence of PW-3, who is a doctor and who had performed the *post mortem* examination on the dead body of Kandi Pegu. His findings are as under:-

- “ 1. Deceased was lying face upward, eyes closed, limbs were straight, trebling of throat mouth and nose.
2. Abdomen swollen and it was in semi decomposed stage.
3. Rigormortic passout.
4. Deceased weight 62 KG, with fair complexion and stout.
5. Wearing underwear made of nylon thread in blue colour.
6. Black clotting of blood on the left side of the head.
7. Laceration mark on the left temporal region with deepest fracture.
8. Haematoma, at 3 centimetres away from the mid line from the left temporal bone. The dimension of the wound was 11 CM x 2 cm into bone deep.”

According to the doctor (PW-3), the cause of death was-

*"Due to depressed fracture of the temporal there was contusion of the brain matter of the neck, cerebral hemisphere, which was swollen. There was sign of haemorrhage with haematoma formation. The cause of death is due to the head injury. PX-6 is the PME report and PX-6(1) is my sig."*

In response to the question put by the Court, PW-3 (doctor) has deposed that the injury, found on the dead body of the said deceased, could have caused death in ordinary course of nature and that the said injury was *ante mortem* in nature.

9. From the above discussion of the evidence on record, what becomes clear is that as far as the evidence on record is concerned, there is nothing to show that it was at the hands of the accused that her husband had sustained injury. In fact, except the fact that Kandi Pegu, i.e. husband of the deceased, had sustained injury as described by the doctor (PW-3) and died due to depressed fracture suffered by him on his head, there is really nothing in the evidence on record to show that Kandi Pegu died as a result of assault at the hands of his wife i.e. the present accused person. It is, in fact, the statement of the accused, recorded under Section 313 Cr.P.C., which has resulted into her conviction. In her examination under Section 313 Cr.P.C, the accused was asked,

"PW-1 Tejiman Limboo deposed that he took one injured person, the husband of accused Bisalu Tayeng to the

hospital, the person was very serious and after some time he died. Who cause the injury to the deceased?

In response to the above question put to her, she replied,

“ I did not go to attend my husband (deceased) in the Medical I straight way went to Police Station to surrender after killing him the deceased first wanted to killed me for which I killed him.”

In her further examination under Section 313 Cr.P.C., the accused was asked and in response to the questions put to her, she replied as under:

“Q. No.2. PW-2 Chandrapal Rai deposed that one morning “Phaguwa” day at around 5 A.M. the accused Bisalu Tayeng informed him that his husband has been very serious since last night at around 12 PM, and hence the deceased has been shifted to Medical. Why your husband has been admitted to the Hospital?

Ans:- Yes I informed Chandrapal Rai that my husband was serious after I hit him, and he has to be admitted in the hospital for treatment.

Q. No.3 PW-3 Doctor Tarik Doke deposed that he had done Post Mortem examination to the deceased and found that the deceased got head injury. How the deceased got head injury?

Ans:- Yes the deceased got injury as I hit on his head (backside) with a spade.



Q. No.4 PW-4 SI LR Rana deposed that he lodged a complaint against you. Why she said IO had lodged complaint against you?

Ans:- Yes, SI L.R. Rana lodged complaint against me for killing my husband by me.”

10. From the answers given by the accused under Section 313 Cr.P.C., what transpires is that the accused was asked as to who had caused the injury to her deceased husband. This question could not have been put to the accused by learned trial Court inasmuch as an examination, under Section 313 Cr.P.C, shall remain confined to finding out the response of the accused to the incriminating pieces of evidence, which may appear, in the evidence, against the accused. No such searching question can be put to the accused, which may impell the accused to respond in such a way that it implicates the accused. Unless an accused offers to appear as a witness to give evidence in his favour, he has the right to remain silent. When an accused appears as a witness to give evidence in his favour, he may be cross-examined by the prosecution; but as far as the Court is concerned, its questioning cannot be in the nature of cross-examination of the accused.

11. Be that as it may, the statement of the accused, in the present case, shows that her husband wanted to kill her, but she killed him. What is, however, important to note is that the said deceased suffered only one injury on his head, though the force applied was so heavy that the fracture, as described above



leading to his death, was caused. Even the statement of the accused, recorded under Section 313 Cr.P.C, clearly shows that only one blow was given by the accused on her husband, because he tried to kill her.

12. In the backdrop of the evidence discussed above, we do not find that the fact of the case, as proved on record, attracted penal provisions of Section 304 Part-1 IPC. The present one was a case of culpable homicide not amounting to murder and when a person commits the offence of culpable homicide not amounting to murder and the death of the person is not intentionally caused, the offence falls within the ambit of Section 304 Part-1 IPC.

13. On appraisal of the evidence on record, we are of the view that the conviction of the accused under Section 304 Part-1 IPC is not sustainable and she ought to have been convicted under Section 304 Part-II IPC. We accordingly set aside her conviction under Section 304 Part-1 IPC and convict her for the offence committed under 304 (Part-II) IPC.

14. Turning to the sentence, we find that the accused has children, none other than the accused is there to look after her children and she has remained in custody for almost 5 years. We are, therefore, of the view that the sentence of imprisonment, which she has already suffered, is adequate punishment for the offence, which she has committed in the circumstances as have been discussed above.

15. In the result and for the forgoing reasons, the accused stands convicted under Section 304 (Part-II) IPC and sentenced to suffer the imprisonment, which she has already undergone.

16. The accused be set at liberty forthwith.

17. With the above observations and directions, this reference shall stand disposed of.

Send back the LCR



JUDGE



JUDGE

sd