

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

Crl. A. No. 05 (AP)/2015

Shri Gaga Moyong, S/o Late Taro Moyong,
Village-Boying, PO/PS-Pasighat,
District-East Siang,
Arunachal Pradesh.

.....Convict.

Shri Kangge Moyong,
S/o Shri Ojong Moyong,
a permanent resident of 2nd Mile Village,
Pasighat, PO/PS-Pasighat,
District-East Siang,
Arunachal Pradesh

....Appellant

By Advocates:

Mr. M. Pertin,

Mr. T. Tapak,

Mr. L. Perme,

Mr. K. Dabi

-Versus-

- 1. The State of Arunachal Pradesh,**
represented through Public prosecutor.

- 2. Shri Tamin Tamuk (Complainant),**
S/o Shri Late Tatong Tamuk,
Village-Banskota, Pasighat,
PO/PS-Pasighat, Dist.- East Siang,
Arunachal Pradesh.

....Respondents

By Advocates:

Mr. K. Tado, PP, AP for resp. No.1.

Mr. O. Pada for resp. No.2.

**BEFORE
HON'BLE MRS. JUSTICE DR. INDIRA SHAH**

**Date of hearing : 01-03-2016
Date of judgment : 01-03-2016**

JUDGMENT & ORDER (ORAL)

This is an appeal against the judgment and order dated 21-09-2015 passed by the learned Additional District & Session Judge, Eastern Zone, Pasighat, East Siang District, Arunachal Pradesh in Psg. Session Case No.169/12 convicting the accused under Section 304 Part-II IPC and sentencing him thereby to undergo simple imprisonment for 5 years.

2]. I have heard Mr. M. Pertin, learned senior counsel for the appellant as well as Mr. K. Tado, learned P.P. appearing on behalf of the respondent No.1/ State of Arunachal Pradesh and Mr. O. Pada, learned counsel appearing for respondent No.2/Informant.

3]. On the basis of the FIR lodged by Shri Tamin Tamuk, alleging inter alia, that on 02-01-1997, the accused Gaga Moyong stabbed his brother Nalo Tamuk, who died in General Hospital at Pasighat, Police registered a case as Pasighat P.S. Case No.01 of 1997 under Section 302 IPC. On completion of investigation, a charge sheet under Section 302 IPC was filed. Initially, the case was tried by the Deputy Commissioner, Pasighat and during the pendency of trial, after bifurcation of judiciary from the executive the case was transferred to First Track Court at Basar. Again the case was transferred from the FTC, Basar to the Court of Additional District Session Judge at Pasighat.

4]. The case was disposed of on 12-07-2007 on the ground of compromise between the victim's family and the accused. On being dissatisfied with the acquittal order, the victim's family filed the present Criminal Revision Petition and this Court set aside and quashed the acquittal order and remanded back the case to the Court of learned Additional District & Session Judge at Pasighat with a direction to proceed with the trial as per law.

5]. The accused pleaded not guilty to the charge framed against him under Section 302 IPC and claimed to be tried. During the trial, the prosecution examined 15 witnesses. Thereafter, the statement of accused under Section 313 Cr.P.C was recorded. On completion of trial, the learned trial Court convicted the accused under Section 304 Part-II of the IPC and sentenced him to undergo simple imprisonment for 5 years.

6]. The appellant has not challenge the order of conviction but the contention of the appellant is that he was compelled to pay compensation victim's family as per the Adi Custom. Therefore, the sentence of imprisonment of 5 years is excessive and disproportionate which is not tenable in law. Moreover, the incident took place in a spar of moment, the accused was intoxicated and the offence was committed under influence of liquor. There was no intention or meansera to kill the deceased.

7]. On perusal of evidence on record, it appears that P.W.1, who lodged the FIR was not witness to the occurrence. He was a reported witness. The incident was reported to him by one Ranjit Regon. P.W.2, Shri Ranjit Regon, stated that he along with the deceased Nalo Tamuk went to the house of Asem Tayeng in the afternoon and after some time, the accused along with two boys appeared in the said house. They all started talking and in the midst of discussions, there was some altercation as regard the people of Rengging. There was mutual fight and P.W.2 also sustained injuries. In the hospital, Nalo Tamuk told him that he was assaulted by the accused. Accordingly, he reported the incident to the informant.

8]. P.W.3, Shri Asem Tayeng, stated that Ranjit Regon reported him that the accused had stabbed the victim by means of a dao. P.W.4, Osup Dai, is a reported witness. P.W.5, Smti Toklak Tayeng, has deposed about the altercation between the accused and the victim. She also noticed the accused holing a dao. Similar is the statement of P.W.6. P.W.7, Shri John Tamuk, has stated about the dying declaration of the deceased. According to him, the deceased stated in the hospital that he was assaulted by the accused.

9]. P.W.8, Obyat Rukbo, did not see the actual occurrence but he was told that the victim Nalo Tamuk sustained serious injuries caused to him by the accused. P.W.9 saw the injury sustained by the victim, who happens to be her husband. The incident was reported to her.

10]. P.W.10, Dr. Saibal Bhattacharjee, deposed that deceased Nalo Tamuk was brought to the hospital by the police in injured condition. He found the stabbed injury on the lower chest of the left side. The injured told him that he was stabbed by one Moyong boy. He also stated that injured told him the name of the person who stabbed him but he forgot the name. The patient died at 1.30 A.M. on the same day.

11]. P.W.11 and P.W.12 are the seizure witnesses. P.W.13 is the Investigating Officer. The dying declaration was also recorded by the Investigating Officer and it was exhibited during the trial. P.W.14, Dr. Marry Ering, examined another injured Ranjit Regon (P.W.2) and found multiple abrasions on his face. P.W.15, Dr. Riken Rina, conducted the post-mortem examination on the dead body of the deceased on 02-01-1997 and he found multiple stabbed injuries on the body of the deceased. According to P.W.15, the death of the deceased was due to internal bleeding from Spleen and hemorrhage shock.

12]. On perusal of evidence on record, it appears that there is no denial of the fact that the cause of death of the deceased was homicidal. The accused inflicted the injuries, which resulted death of the deceased. The plea of the accused was that the incident occurred under the influence of liquor. Another submission of the accused was that the matter was referred to 'Kebang' and the 'Kebang' imposed a fine of Rs.3,50,000/- with local beads and brass. Therefore, the trial before the learned Additional District Session Judge amounts to double jeopardy.

13]. Though, there may be a decision by the local Kebang, the Kebang authority has no jurisdiction to try a case of homicide. The learned trial Court took into the consideration the fine amount paid by the accused as per the decision of the Kebang and therefore, did not impose any fine while imposing imprisonment for conviction under Section 304 Part-II IPC.

14]. It is submitted by the learned senior counsel for the appellant that the accused had already suffered imprisonment for 2 years during the investigation and trial of the case. Thereafter, after conviction, he was in jail for 8 months. He had already paid the compensation to the victim's family and has suffered the agony of trial for a long period. The incident occurred in the first part of the year 1997.

15]. Considering all aspects, while maintaining the conviction under Section 304 Part-II IPC, the sentence of simple imprisonment of 5 years is hereby reduced to the period already undergone by the accused(convict).

16]. With this modification, this appeal is allowed to the extent as indicated above. Return the LCRs to the learned Court below along with a copy of the judgment and order forthwith.

JUDGE

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