

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

Crl. A. 05 (AP) 2017

1. Sri Kaling Ering,
S/o Talom Ering,
R/o JN College Campus,
P.O./P.S.- Pasighat,
Dist:-East Siang, A.P.

.....Petitioner.

Advocates for the Petitioners:

Mrs. S. Nag.

-Versus-

1. The State of Arunachal Pradesh.
2. Sri Bollet Paging,
S/o Lt. Tamet Paging,
R/o JN College Lower Campus,
P.O/ PS. Pasighat, A.P.

.....Respondents.

Advocates for the Respondents:

Mr. K. Tado, learned PP.

:::BEFORE:::

HON'BLE JUSTICE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing : **26.07.2017.**

Date of Judgment & Order (Oral) : **26.07.2017.**

JUDGMENT & ORDER (Oral)

Heard Mr. S. Nag, learned counsel for the accused appellant and Mr. K. Tado, learned PP appearing for the State.

2] Considering the submission of the learned counsel for the petitioner and the nature of punishment that has been awarded by the learned Addl. District and Sessions Judge, Pasighat, the revision is hereby converted to appeal and the Registry is directed to reflect the same in cause title as appeal.

3]. This appeal is preferred against the judgment and order, dated 20.03.2014, passed by the learned Addl. District and Sessions Judge, Pasighat convicting and sentencing the appellant to suffer S.I. for a period of 2 (two) years with a fine of Rs.1,000/- under Part-II of Section 304 IPC in connection with Pasighat P.S. Case No. 278/2013.

4]. The prosecution case, in brief, is that, on 18.01.2010, Dr. Bollet Paging lodged an FIR to the effect that the appellant at around 11.30 PM had beaten his brother/ the deceased i.e. Lt. Oni Paging with a bamboo stick on his head following minor altercation and as a result of which he succumbed to his injuries next day morning at about 02.30 AM. On the basis of the aforesaid FIR Pasighat P.S. Case No. 03/2010 was registered under Section 302 IPC and after due investigation Charge-Sheet was submitted against the appellant under Section 304/201 IPC. The appellant faced the trial and denied the Charges levelled against him. In course of trial, the prosecution, examined as many as 10 witnesses including the Medical Officer, who conducted the Post Mortem, the Investigating Officer and the Judicial Magistrate who recorded the confessional statement of the accused and also examined the accused under Section 313 Cr.P.C. The defence adduced none of the defence witnesses. At the conclusion of the trial, the appellant was found guilty under Section 304 Part-II and sentenced him to imprisonment as aforesaid.

5]. Challenging the legality and the validity of the aforesaid Judgment and Order, the present appeal has been preferred on the ground that there being no any eye witnesses and having no enmity between the parties prior to occurrence of the incident, the conviction of accused appellant under Section 304 Part-II is bad in the eye of law and is liable to be set aside. Learned counsel for the appellant is heard at length.

6]. Also considered the submission of the learned counsel for the State respondent. Pursuant to the submission that has been made, I have gone through

the evidence. In the present case, admittedly, the occurrence took place in the house of PW. 3. At that time, the PW. 1 Shri Joseph Dupak, PW. 2 Shri Talom Ering & PW. 9 Shri Tabing Tamuk was also present but on perusal of the records, it reflects that except about quarrel between the deceased and the accused appellant, they have not stated about the fact that the accused appellant attacked and assaulted the deceased resulting injuries on his persons. The evidence of PW. 1 & 2 is very relevant in the present case, because of their presence in the place of occurrence but they have given evidence that they were attending the party at the house of PW. 3 but at the relevant time, there was a quarrel between the accused appellant and the deceased and as it was a dark night they could not see the occurrence and they simply found the deceased lying on the ground. The evidence of PW. 2 is also on different footings who said that he was himself who separated the quarrel and he tried to pacify them, then the deceased gave him blow on his head as a result of which he fell down and sustain injuries on his face; he also shown ignorance as to how the deceased was lying subsequent there. Though, these PW. 1, & 2 were declared hostile by the prosecution but even then they did not support the prosecution case.

7]. PW. 3 is a hearsay witness having no knowledge about the occurrence of the incident. The evidence of PW. 4 Dr. Bolet Paging who is the informant of the case is also unable to give any direct picture of the occurrence as he was not present at the time of occurrence and only on return he came to know that there was a quarrel between the accused appellant and the deceased and he came to know from his mother that the accused appellant has assaulted the deceased by a bamboo stick but his mother was not examined by the prosecution. According to him, the accused appellant confessed before him that he committed the mistake and begged for pardon. The witness also stated that he came to know about mutual fight between the parties and the fight was separated and normalized by intervening presence of the other persons. In course of cross examination, he has admitted that the accused appellant is a childhood friend of the deceased and there was no enmity between the parties, though, his injured brother was taken to the Hospital, he was stated to be O.K. by the attending Doctor but subsequently, he died. Another witness, PW. 5 Shri Balong Pertin who also happens to be present at the time of occurrence have stated all about the hot argument between the parties and they separated them at the crucial time, and then he went out for urination

purpose and on return he found the deceased lying on the ground with injuries on his head but he has not utter a single word who made the assault upon the deceased so as to cause his death. He has also categorically admitted that where the deceased fell down was a rough ground with mixture of sand and stone etc., as a result of which there was bleeding from the head of the deceased. After the injured was taken to hospital, the accused appellant also reached the Hospital on his bike.

8]. PW. 6, though, appeared before the Court but he was not examined by the prosecution being not a material witness to the case. It appears that the accused appellant made a confessional statement in course of trial and the same was proved by the evidence of PW. 7/ the Magistrate who recorded the statement vide P. Exhibit-3. As per the evidence of PW. 8/ Dr. T. Riso, there was no injury on the other part of the body of the deceased, save and except there was a extra dural haemorrhage in the brain as a result of which the patient/ the deceased died. He, however, opined that such injury may be caused by felling upon a hard substance.

9]. Lastly, the I.O. of the case Shri P. K. Chatterji as PW. 10 has stated about the investigation and about the filing of Charge-Sheet against the accused appellant vide Charge Sheet No. 13/2010 dated 28.02.2013.

10]. From overall scrutiny of the materials on records, it reflects that in spite of being present in the place of occurrence, the material witnesses has not stated anything implicating of the accused appellant for any brutal assault upon the deceased. However, the facts remains, that there was a quarrel between the parties and immediately thereafter deceased was found lying on the ground and he sustained injuries on his head. As per the evidence of the informant, the accused appellant made a statement before him acknowledging his guilt. Further, in his confessional statement appellant has also admitted about some sudden fight with the deceased and in the process, he admitted to have given one blow to the deceased. Even, if we accept the statement of the accused appellant that he gave one blow to the deceased but it can be simply inferred that there being no earlier enmity between them that he has no any intention to cause the death of the said deceased who was his childhood friend.

11]. In view of the findings of the Medical Officer that there was injury on the brain of the deceased as a result of which, the deceased died is factum of death out of assault made by the accused appellant cannot be denied. This Court has also taken note of the fact that it was the deceased person who himself became aggressive and assaulted the PW. 2 and the accused appellant tried to persuade him to refrain from such assault and in the process there was a quarrel between them and with a view to resist the deceased from further assault to the said witness, the accused appellant dealt a blow upon the deceased as a result of which he fell down on the ground which consist of stone etc., resulting bleeding from the wound and subsequently, he died.

12]. It has also been submitted by the learned counsel for the appellant that in view of the Local Keba in the village, the appellant has already paid the compensation towards the victim family. Ld. PP also submits that the Court can consider for passing adequate sentence in the given circumstance of the case.

13]. Considering all entirety of the matter and materials available on record, this Court is of the opinion that the sentence given is on higher site. Accordingly, while maintaining the conviction under Section 304 Part-II IPC, the appellant is sentenced to the period already undergone by him during the trial and the amount of fine will remain the same.

14]. The appeal is partly allowed, as indicated above.

Return the LCRs.

JUDGE

Talcm