

THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, ARUNACHAL PRADESH AND MIZORAM)

Criminal Appeal No. 128(J) of 2013

Appellant/Accused Mongal Soren

Respondents The State of Assam

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. AJIT SINGH
HON'BLE MR. JUSTICE MANOJIT BHUYAN**

For the Appellant/Accused ... Mr. R Sarma,
learned Amicus Curiae
For the Respondents ... Mr. K Konwar, learned
Additional Public Prosecutor,
Assam
Date of hearing & Judgment ... 03.01.2017

JUDGMENT AND ORDER

(Ajit Singh, C.J.)

The sole appellant Mongal Soren has been convicted under Section 302 of Indian Penal Code and sentenced to imprisonment for life and fine of Rs.5000/- with default stipulation.

2. The victim of incident was Dhani Tadu, aged 28 years.

3. Dhani, after leaving her first husband, re-married to appellant. She, therefore, along with her son, aged about 5 years from her first husband, lived with the appellant in Village Bhangapara falling within the jurisdiction of Police Station Basugaon, District Chirang. According to the prosecution case, on 30.10.2011, around 9.30 p.m., the appellant dealt a blow with an axe on the stomach of Dhani. This he did in his house. The blow was so severe that it also cut the small and large intestine below umbilicus region and resulted into her death on the spot. The appellant then on the following morning went to the house of Village Headman and told him that his wife had killed herself. At

that time other villagers were also present. Thereafter, Thomas Kisko (PW-2), Hutu Hembram (PW-3) and Sundar Soren (PW-6) and some co-villagers went to the house of appellant where they found dead body of Dhani with a bleeding cut injury in abdomen. Seeing this, the public apprehended the appellant and informed the matter in the Camp of Bircha Command Force. One Commander from the Bircha Command Force reached the place of occurrence and took the appellant to the Camp. Sundar Soren then made ejahar exhibit 5 at Police Station Basugaon against the appellant. The police took the appellant into custody from the Camp and brought him to his house. During interrogation, the appellant admitted that he had killed Dhani and also produced the axe. The police seized the axe vide exhibit 3 in the presence of Sundar Soren (PW-6) and Thomas Kisko (PW-2).

4. Dr. Nihar Ranjan Biswas (PW-5) conducted the post mortem examination on the dead body of Dhani. He found two blackish bruises over right maxillary region measuring 2 cm x 2 cm and a sharp cut injury over abdomen below umbilicus measuring 10 cm x 7 cm x 5 cm. The doctor also found cut injuries on small and large intestine. He, in his post mortem examination report exhibit 2, opined that Dhani died due to shock and haemorrhage.

5. At the stage of framing of charge, the appellant admitted his guilt, but the trial court, in all fairness, proceeded to decide the trial on merits by directing the prosecution to prove its case. The appellant, however, during his examination as an accused, pleaded false implication though he did not deny that his wife Dhani died in his house on account of injuries in the abdomen. He also admitted injuries on her face.

6. It is argued on behalf of appellant that in the absence of any eye witness that he caused injuries to Dhani, the trial court committed an illegality in convicting him under Section 302 of the Indian Penal Code. The learned Additional Public Prosecutor, on

the other hand, defended the conviction and sentence of the appellant, as passed by the trial court.

7. In *Ganeshlal Vs. State of Maharashtra* (1992) 3 SCC 106, the accused was prosecuted for the murder of his wife which took place inside his house. In this case, the Supreme Court observed that when the death had occurred in the custody of accused, he is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 of the Code of Criminal Procedure. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife.

8. The Supreme Court in the case of *Trimukh Maroti Kirkan Vs. State of Maharashtra* (2006) 10 SCC 681 has again approved the well settled principle that when an incriminating circumstance is put to the accused and that accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. In this case the Supreme Court has also held that where a husband is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling house where the husband also normally resided and if the husband does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it was a strong circumstance pointing that he alone was responsible for the commission of crime.

9. There is yet another decision of the Supreme Court, *State of Rajasthan vs. Kashi Ram* AIR 2007 SC 144 wherein it is held that when the accused was last seen with his murdered wife, he must give explanation or plead alibi in support of his innocence or else it

would be a strong circumstance against him pointing towards his guilt.

10. In the case at hand, the injured dead body of Dhani was found in the appellant's house, where both of them lived. The appellant has also admitted this fact, while being examined as an accused under Section 313 of the Code of Criminal Procedure. The post mortem examination report of Dhani confirmed that her death was homicidal. The correctness of the post mortem examination report was not challenged by the appellant. He also did not suggest Dr. Nihar Ranjan Biswas that injuries on Dhani were self-inflicted. Sundar Soren (PW-6) has deposed that while the police was taking the dead body of Dhani away from the house, appellant was also present and he confessed before him that he had killed his wife (Dhani). According to the evidence of Sundar Soren, the police then even seized an axe Material Exhibit 1 whereafter he lodged ejahar at Police Station.

11. Having regard to the above referred decisions of the Supreme Court and in the absence of any plausible explanation from appellant regarding the homicidal death of Dhani in his house, where both of them lived together, leads to only one conclusion that he alone was responsible for the commission of crime.

12. The learned counsel for the appellant took us through the evidence of Investigating Officer-Karendra Chandra Roy (PW-8) to convince us that the appellant, at best, can be convicted under Section 304 Part I or Part II of the Indian Penal Code. According to the evidence of Karendra Chandra Roy, the appellant had told him that both he and Dhani picked up a quarrel, after consuming liquor, and since he had an axe in his hand, it accidentally struck in the abdomen of Dhani. We are not impressed with this supposed disclosure of appellant to Karendra Chandra Roy because it is far from truth. The injury found in the abdomen of Dhani completely

belies the disclosure of appellant. As already mentioned above, the blow in the abdomen of Dhani with an axe was so severe that it had cut the small and large intestine below umbilicus region. Such a deep cut injury was not possible accidentally as told by the appellant.

13. The appeal has no merit. It is accordingly dismissed.

JUDGE

CHIEF JUSTICE

skd