

**Suruj Ali Vs. State of Assam**

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**Court :** Guwahati

**Decided On :** Feb-01-2005

**Judge :** P.G. Agarwal and A. Hazarika, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304

**Appeal No. :** Criminal Appeal No. 154(J) of 1997

**Appellant :** Suruj Ali

**Respondent :** State of Assam

**Advocate for Def. :** F.H. Laskar, Adv.

**Advocate for Pet/Ap. :** B. Choudhury, Adv.

**Judgement :**

**P.G. Agarwal, J.**

1. Heard Mr. B. Choudhury, the learned Amicus Curiae for the accused appellant and Mr. F.H. Laskar, the learned P.P.

2. This appeal is directed against the Judgment and Order dated 8.4.97 passed by the Sessions Judge, Cachar, Silchar in Sessions Case No. 92 of 1996 (GR Case No. 1008/ 96) convicting the accused appellant Under Section 302 IPC and sentenced to imprisonment for life and to pay a fine of Rs. 1,000/- in default further

imprisonment for one month.

3. This is an unfortunate case of death of a house wife in the hands of her husband accused appellant Suruj Ali. The accused was married to one Joytunnessa and out of the said wedlock two children were born to them. According to the prosecution on 5.5.1996 at about 7 p.m. the accused appellant assaulted his wife whereupon the victim raised alarm and the neighbours came who saw the accused assaulting the deceased by kick and blow and as alleged the deceased was assaulted by lathi and thereafter the accused fled the scene and the deceased died. On FIR being lodged, usual investigation including inquest etc. was made by police and the dead body was sent for post mortem examination.

4. PW 8 Dr. Homeswar Sarma held the autopsy over the dead body on 7.5.1996, i.e., after more than 36 hours of the incident and found as follows :--

'Injuries :

(1) An abrasion 1 x 1 cm over the left knee.

All other organs both Thorasic and abdominal and visceras were decomposed. Stomach contained undigested rice food. The brain was liquified.

Opinion :

No opinion regarding the cause of death can be given as the deadbody had undergone decomposition. Time passed since death approximately calculated at 36 to 48 hours.'

5. We have perused the Inquest Report (Ext. 1) and find that although the inquest was made after the incident, the I/O did not find any major injury except slight abrasion. In this case, the prosecution could not establish the cause of death. But due to decomposition of the body the trial court held this to be a case of homicide amounting to murder.

6. The fact that the deceased Joytunnessa was married to the accused appellant and the birth of two children and the incident took place within five years of the

marriage has been deposed to by the father of the victim Sikandar Ali (PW 9) and the other witnesses and this part of the evidence has not been challenged.

7. So far the incident of assault is concerned, there is a number of neighbouring eye witnesses in the person of Mst. Angura Begum (PW 1), Ismail Ali (PW 2), Mayaj Ali (PW 3), child witness Altaf Hussain (PW 4) and Asarun Nessa (PW 6). They were all neighbours of the accused and the deceased. PW 4 is aged 13 years and he deposed that on hearing alarm from the side of the house of the accused, he went inside the house and saw the accused giving kicks to the deceased whereupon PW 4 raised alarm and informed the matter to PW 1 and thereafter the other neighbours came in. They saw the accused assaulting the deceased by giving lack blow and thereafter the accused fled the scene. Jahir Uddin (PW 5), however, did not see the assault but he saw the accused running away from the house.

8. In the present case, we find that all the eye witnesses rushed to the P.O. on hearing alarm and they did not try to exaggerate the things and they have also not tried to put embroidery on the prosecution version of the story and they had deposed as to what they had seen. These witnesses had no animus with the accused and as a matter of fact the accused has not raised anything against them and the trial court was right in relying their evidence, which is supported by medical and oral evidence on record. We also find no reason to take a contrary view in the matter and in view of the tale tell materials available on record, we hold that it was the accused appellant who assaulted the deceased and the deceased died at the spot.

9. The next question for determination is whether the act of the accused constitutes an offence of murder. Admittedly there was no motive or intention on the part of the accused to kill his wife. Moreover, the accused did not use any lethal weapon to kill his wife and as stated above the prosecution could not make out any case as regards the intention to cause death. Hence in the facts and circumstances of the case, the benefit, if any, must go to the accused appellant.

10. In view of the above, we hold that the act of the accused constitutes an offence punishable Under Section 304 Part II IPC. The accused appellant is in jail since

1997, i.e., nearly eight years. He was also in custody earlier from 6.8.1996 to 20.11.1996. Hence, considering the facts and all relevant circumstances, we sentence the accused appellant to the period of imprisonment already undergone by him. The accused appellant Suruj Ali be released forthwith from the jail custody, if not wanted in connection with any other case.

11. The appeal stands disposed of accordingly.

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