

**Anil Chandra Deka Vs. State of Assam**

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**SooperKanoon Citation :** [sooperkanoon.com/134132](http://sooperkanoon.com/134132)

**Court :** Guwahati

**Decided On :** Feb-10-2003

**Judge :** P.P. Naolekar, C.J. and Ranjan Gogoi, J.

**Acts :** Indian Penal Code (IPC) - Sections 300

**Appeal No. :** Criminal Appeal No. 218(J) of 1996

**Appellant :** Anil Chandra Deka

**Respondent :** State of Assam

**Advocate for Def. :** Z. Kamar, Public Prosecutor

**Advocate for Pet/Ap. :** R. Baruah, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Ranjan Gogoi, J.**

1. This appeal is directed against the judgment and order dated 22-8-1996 passed by the learned Sessions Judge, Noagaon in Sessions Case No. 44(N) of 1996 convicting the accused appellant under Section 302 Indian Penal Code and sentencing him to undergo Rigorous Imprisonment for life.

2. The prosecution case, in short, is that on 5-1-96 at about 8 a.m. the accused appellant caused the death of his mother Smt. Padmawati Deka by giving dao blows on her neck, near the sugarcane field of one Dulal Baruah. From the place of occurrence, it is alleged that the accused came to Jajori Police Station at about 9 a.m. and reported the said incident whereafter he was detained in the police Station. It is the further case of the prosecution that at about 9.30 a.m. on the same day, a written ejahar (exhibit-1) with regard to the occurrence was lodged at the said police station by one Edhan Ch. Deka, P.W. 3, who is the uncle of the deceased. On the basis of the aforesaid ejahar, Jajori PS Case No. 3 of 1996 under Section 302, IPC was registered and the accused was arrested in connection with the said case. After registration of the case as aforesaid, police started investigation, in the course of which, the police visited the place of occurrence, held inquest over the dead body and prepared the inquest report, (exhibit-4). A sketch map of the place of occurrence (exhibit-3) was also prepared and in the course of investigation the statements of a large number of persons were recorded by the Investigating Officer. On completion of investigation, the police submitted the charge-sheet (exhibit-5) against the accused appellant under Section 302, IPC.

3. The case having been committed to the Court of Session for trial, a charge under Section 302, IPC was framed against the appellant by the learned Sessions Judge and as the accused pleaded not guilty and claimed to be tried, the trial commenced against the accused appellant. Seven (7) witnesses were examined on behalf of the prosecution whereas the defence did not examine any witness in support of its case. At the conclusion of the trial, the learned Sessions Judge, on the basis of the materials on record, convicted and sentenced the accused appellant, as aforesaid, giving rise to the present appeal.

4. We have heard Mr. R. Baruah, the learned Amicus Curiae appointed for the case. We have also heard Mr. Z. Karhar, learned Public Prosecutor for the State of Assam.

5. Before embarking upon on a discussion to decide the correctness of the conviction and sentence as recorded by the learned Court below, it may be

apposite to briefly notice the evidence adduced in the case on behalf of the prosecution.

P.W. 1 is the father of the accused and the husband of the deceased. According to this witness, at the time of occurrence, when he (PW. 1) was making preparation to go to the market, the deceased along with his daughter Tutumoni (PW. 4) were at the backside of the dwelling house. According to this witness, at that time he heard Tutumoni shouting that her brother, i.e. the accused appellant was going to kill her mother. Soon thereafter, this witness claims to have seen the accused going towards the backside of their house taking a dao in his hands and once again he heard PW. 4 shouting that the accused appellant was killing her mother. This witness has deposed that on hearing the same he ran towards the backside of the house and there he found his wife lying on the ground with her neck severely cut. The accused was seen running towards the paddy field.

P.W. 2 is a cousin of the accused appellant. According to this witness at about 7.30 a.m. on the date of occurrence, he along with his brother Dulal (P.W. 6) was working in their sugar cane field. At that time, according to this witness, he could see the deceased running towards them and the accused, holding a dao in his hand chasing her. This witness claims to have raised a bamboo stick lying on the ground and asked the accused not to come near, but after some time, the accused, who remained standing making threatening gestures, suddenly came near the deceased, caught her and gave a blow with the dao on her neck and thereafter fled towards the paddy field holding the said dao in his hands.

P.W. 3 Edhan Ch. Beka who has lodged the ejahar (exhibit-1), in his deposition, has stated that on the date of occurrence at about 8 a.m. he heard halla from the sugarcane field of one Jyoti Baruah. Having heard halla, he came out from his house and while he was proceeding towards the sugar cane field, he saw the accused coming with a blood stained dao in his hand from the opposite direction. According to this witness, though he had asked the accused as to whom he had cut and as to where he was going, the accused did not give any reply save and except saying that he was going to the Thana. This witness has further deposed that on reaching the place of occurrence, he found that the deceased was lying on

the ground and was already dead. Thereafter, the witness claims to have proceeded to the Thana and after getting an ejahar (Exhibit-1) written, he lodged the same at the said Thana.

P.W. 4 Tutumoni Deka is the daughter of the deceased. According to PW. 4, on the date of occurrence at about 8 a.m., when she was at the backyard of the house spreading paddy on the ground, she saw the accused chasing her mother with a dao in his hand. According to this witness, she tried to stop the accused but was not successful. This witness has further deposed that her mother ran towards the house of P.W. 3 and the accused was chasing her with a dao in his hand. According to this witness, she also started running after the accused and thereafter she saw the accused giving blows with the dao to her mother while she was on the path leading to the sugarcane field. P.W. 4 has deposed that her mother fell down on the ground as a result of the blows given by the accused and that seeing her mother, she also fainted.

P.W. 5 Dr. Badan Ch. Kakati who conducted the post mortem on the dead body of the deceased Padmawati, in his deposition has stated that the following injuries were found in course of examination :

1. One deep sharp cutting wound severing the head from the trunk at the level root of the neck except a thin lap adherent to it.
2. One deep cut injury at the nape of the neck. Size 6' X 1' x deep into brain.

According to the Doctor witness, the injuries were ante-mortem in nature and the same were sufficient to cause death in the ordinary course of nature. The post-mortem report was proved by P.W. 5 and exhibited as exhibit-2 in the trial.

P.W. 6 is the elder brother of P.W. 2 and another alleged eye-witness Of the occurrence. His evidence is similar to that tendered by P.W. 2.

P.W. 7 is the Investigating Officer of the case. This witness has deposed that on 5-1-96 at about 9 a.m., the accused appeared at the police station whereafter he was detained and shortly thereafter, Exhibit-1, the ejahar was lodged by P.W. 3. At about 10-30 a.m. after Jajori PS Case No. 3 of 1996 was registered, P.W. 7 visited

the place of occurrence which was located on a small path at Namatigaon where he found that the dead body of a woman was lying on the ground. The dead body bore cut injuries on the neck. The dead body was identified by PW. 3 as the dead body of his sister-in-law, Padmawati, whereafter the inquest was held on the dead body and inquest report was prepared. This witness has also deposed that a sketch map of the place of occurrence (exhibit-3) was prepared by him.

6. The learned trial Court on consideration of the evidence of the prosecution witnesses thought it proper to discard the evidence of P.W. 2 and P.W. 6, the alleged eye-witnesses to the occurrence. In so far as P.W. 2 is concerned, the learned trial Court held that the said witness was not examined by police and the version given by him was made for the first time in the Court and on the said basis the learned trial Court thought it unsafe to rely on the oral testimony of P.W. 4. In so far as P.W. 6 is concerned, the learned trial Court, on a consideration of the evidence tendered by the witness, came to the conclusion that the said witness was unable to depose as to on which side of the neck of the deceased the blow (s) were administered, which reasonably give rise to the conclusion that the said witness may not have been an eye-witness to the occurrence in so far as the giving of blows with the dao by the accused is concerned. The learned trial Court, therefore, thought it proper not to rely on the evidence of P.W. 6. The learned trial Court also, upon consideration of the evidence of P.W. 1 and P.W. 3, found certain contradictions and inconsistencies in the evidence of these witnesses and therefore, partially believed the version given by these two witnesses in the Court. However, in so far as the remaining eye-witness, i.e. P.W. 4 is concerned, the learned trial Court, on the scrutiny of the evidence tendered by the said prosecution witness found no infirmity, inconsistency or contradiction in the evidence tendered by the said witness and on that basis held P.W. 4 to be reliable and trustworthy. The evidence of P.W. 4 having been corroborated by the medical evidence on record as well as the evidence of P.W. 7 Investigating Officer, with regard to all material aspects of the case, the trial Court came to the conclusion that the charge brought against the accused appellant has been fully proved by the prosecution.

7. We have perused and scrutinized the entire evidence and other materials on record including the judgment and order passed by the learned Court below. We have also considered the submissions advanced by the learned counsel for the parties.

8. For deciding the culpability of the accused appellant it would hardly be necessary for this Court to enter into any discussions with regard to the correctness of the view taken by the learned trial Court with regard to the veracity of the evidence tendered by P.W. 2 and P.W. 6, the alleged eyewitnesses to the occurrence. It would also not be necessary for this Court to consider as to whether the learned trial Court had correctly disbelieved a part of the testimony of P.Ws. 1 and 3 tendered in the case. Any consideration of the view taken by the learned trial Court on the aforesaid aspects of the case becomes irrelevant, inasmuch as, the learned trial Court found the evidence of the 3rd eye-witness i.e. P.W. 4 to be reliable and trustworthy. The evidence tendered by P.W. 4, in our considered view, admits of no ambiguity and/or room for any doubt. This witness P.W. 4 has very clearly deposed that on the date of occurrence, the accused was chasing the deceased with a dao in his hand and seeing the same she also ran after the accused. This witness has also deposed that after some time the accused caught hold of the deceased and gave dao blows on her neck, as a result of which the deceased fell down on the ground and the incident took place on village path. The evidence of P.W. 4, as aforesaid, stands fully corroborated by the evidence of the Doctor witness (P.W. 5) and also the evidence of the Investigating Officer (P.W. 7) who has categorically stated that the dead body was found on the path. No material, even remotely, effecting the credibility of the evidence tendered by P.W. 4 is available on record for us to entertain any doubt that P.W. 4 is a truthful and reliable witness. Culpability of the accused has to be judged not by the quantity but by the quality of the evidence tendered by the prosecution. In the facts of the present case we see no reason to take any other view save and except that the charge against the accused has been fully proved by the prosecution. No interference would therefore, be called for with the judgment and order dated 22-8-96 passed by the learned Sessions Judge. Noagaon in Sessions Case No. 44(N)/96.

9. In view of the foregoing discussions, this appeal will stand dismissed and the judgment and order dated 22-8-96 passed by the learned Sessions Judge, Noagaon in Sessions Case No. 44(N) of 1996 stands affirmed.

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