

**Kanchan Kumar Dev Vs. State of Assam**

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**Court :** Guwahati

**Decided On :** Nov-16-1989

**Judge :** S. Haque and W.A. Shishak, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304

**Appeal No. :** Criminal Appeal No. 38 of 1987

**Appellant :** Kanchan Kumar Dev

**Respondent :** State of Assam

**Advocate for Def. :** G. Ghopal, Public Prosecutor

**Advocate for Pet/Ap. :** M.A. Laskar and Sk. N. Mohammad, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

**S. Haque, J.**

1. Makhan Sarkar and his wife Kamala Sarkar were killed with dagger blows on 13-6-1985. Accused-appellant Kanchan Kumar Dev was responsible for causing their death. He faced the trial in the court of Sessions Judge, Silchar in Sessions Case No. 140/1985 under Section 302 I.P.C. and was convicted for the said charge vide judgment dated 2-1-1987 and sentenced to suffer imprisonment for

life. Hence, this appeal by Kanchan Kumar Dev.

2. There was no dispute on the fact of death of Makhan and Kamala as a result of injuries sustained on 13-6-1985. Dr. B. K. Borah, Asstt. Prof. of Forensic Medicine, Silchar held post mortem examination on both the dead bodies. He found three stab wounds of the following descriptions on the body of Makhan :--

(1) one stab wound situated on the left of the chest near nipple laterally over the 4th intercostal space penetrating into the thorax, pleura cut, left lung cut with profuse haemorrhage, anterior wall and right heart was cut of the size 2 x 5 cm with haemorrhage; (2) skin deep cut wound 3 x 1 cm on lower part of left lateral side of thorax; and, (3) cut wound on postero-lateral side of left upper arm at middle part size 2'5 x 1 cm.

Doctor opined that death of Makhan was due to stab wound described above under No. 1 which cut the lung and heart. Considering the nature of the injuries, we fully agree with the opinion of Doctor.

3. Doctor found the following stab and cut wounds on the body of Kamala:--

(1) one stab wound over right axillary region size 2'5 x 1 cm situated at 2nd intercostal space penetrating deep into thoracic cavity, the cavity was full with clotted blood about 2 litres, right pluera was cut, right lung penetrated throughout with wound measuring 2 x 5 cm on the right side with profuse bleeding and the cavity was full of dotted blood; (2) a cut wound on the medial side of right upper arm over upper part measuring 7 cm x 2 cm.

Doctor opined that the death of Kamala was due to stab wound described above under wound No. 1 which cut the lung and heart. Considering the nature of the injuries, we fully agree with the opinion of the Doctor. 3 eye witnesses have deposed that the injuries were caused by dagger blows. Their evidences have been fully corroborated by the medical evidence. Thus, it was proved by evidence of eye witnesses and medical evidence that both Makhan and Kamala died due to injuries sustained on 13-6-1985.

4. Deceased Makhan was a tenant of accused Kanchan in the same compound. P.W. 4 Nilmoni was a sub-tenant, he occupied a room in the house of Makhan. He lodged the First Information Report. It was stated in the FIR that accused Kanchan murdered Makhan Sarkar and Kamala Sarkar with sharp weapon and the dead bodies were lying in the varandah of the house of deceased. It was found from the evidence of eye witness P.W. 1 that the dagger blows were given on the deceased in their varandah just outside the entrance door where dead bodies were lying. The Investigating Officer found the dead bodies at that place. The sketch map of the place of occurrence (Ext. 4) prepared by the Investigating Officer has indicated the spots at 'H' and 'W' on the varandah of the house where the dead bodies were lying, it was specifically recorded in the index of the sketch map that both the dead bodies were found lying on the southern varandah just in front of the door of the house of Makhan Sarkar. The house was partitioned; Southern portion was occupied by Makhan with his wife Kamala, whereas the Northern portion was in occupation of informant Nilmoni Das (P.W. 4). It was proved that the actual occurrence of assault by dagger on the deceased took place over the varandah of the house of deceased.

5. There was a mango tree which belonged to land-lord/accused Kanchan Kr. Dev in that compound. There was a heavy rain in the afternoon and ripe mangos fell on the ground. Shri. Manna Sarkar, son of deceased Makhan aged about 8 years collected some mangos. Sobha Rani, sister of accused Kanchan snatched away mangos from Manna. Manna reported this to his father Makhan. Whereupon Sobha Rani rebuked Manna for such reporting: to his father and she remarked that they are quarrelsome people. Makhan came out from his cow-shed and enquired Sobha Rani as to why she called them quarrelsome people. Accused Kanchan came forward and asked Makhan not to question his sister Sobha Rani and to leave the place. Makhan refused to leave the place and demanded explanation on the remark made by Sobha Rani. All those exchange of words between the accused Kanchan and deceased Makhan took place under the mango tree near to the court-yard of accused Kanchan. The accused asked Makhan to quit his land if he could not relish the allegation made by the accused and his sister Sobha Rani. Makhan replied that he would not quit the land. This altercation became heated between the accused Kanchan and the deceased Makhan.

6. Seeing such altercation, Kamala wife of Makhan came out from the house and tried to take her husband Makhan to the house and dragged him near to their house. While Kamala was dragging Makhan towards their house, Makhan by lifting his loongi and exposing private part to accused Kanchan by uttering that what he could do if he would not quit his land. Kamala Pushed her husband Makhan inside the house and closed the bamboo door from inside. Accused Kanchan lost his temper and went inside his shop house nearby and came out with a dagger to the varandah of Makhan. At that time Kamala called Smt. Niva Rani as (P.W. 1) for their help. Smt. Niva Rani Das was witnessing the occurrence from the beginning from her court-yard as she was next door neighbour of accused Kanchan. Niva Rani came to the house of Makhan and pressed the door from outside, so that Makhan could not come out. Accused Kanchan rushed near to the door of Makhan with the dagger in hand and forcibly opened the door, whereupon Makhan and his wife came out to the varandah. Makhan hit accused Kanchan with a lathi on his back. Accused Kanchan dealt dagger blows on Makhan and thereafter dealt dagger blows on Kamala and ran away from that varandah and entered his house. Both Makhan and Kamala fell down on the varandah with injuries on their chests and died. All these material facts of the occurrence from beginning to the end have been convincingly described by P.W. 1 Smt. Niva Rani Das, a genuine eye witness. We have carefully scrutinised her evidence and found it free from infirmity. She is a trustworthy witness and described the true picture of the incident from beginning till end. Her version as to assault and injury have been fully corroborated by the Medical evidence.

7. P.W. 2 Smt. Sonamoni Das is a neighbour of the accused Kanchan. She saw accused dealing dagger blows on the person of Makhan and Kamala. She tried to hold accused Kanchan while he was assaulting Makhan and Kamala; she also sustained cut injuries from the dagger in the hand of accused. P.W. 7 Dr. A. K. Boragohain found cut injury over the dorsum of left hand of Sonamoni. P.W. 4 Nilmoni Das immediately came to the place of occurrence and found Makhan and Kamala lying dead with injuries. Witnesses Nibha Rani Das and Sonamoni Das were found near the dead bodies and learnt from them that Kanchan dealt dagger blows on both out of some quarrel over mango. He lodged First Information Report. Both P.Ws. 2 and 4 are found to be trustworthy witnesses.

8. It was proved beyond doubt that accused Kanchan was responsible for the death of Makhan and Kamala Rani. He dealt dagger blows on both of them in their varandah.

9. Learned counsel Mr. M. A. Laskar submits that the case comes within Exception 1 of Section 300 and that accused acted at the spur of moment during quarrel and altercations and that the offence committed was within the purview of Section 304 Part II of the I.P.C. Whereas the learned Public Prosecutor Mr. G. Gopal Gurumurti submits that the acts of the accused do not attract this Exception and it was out and out a murder punishable under Section 302, I.P.C. Mr. Laskar in support of his submission referred to the case laws reported in AIR 1984 SC 759 : (1984 Cri LJ 478) (Tholan v. State of Tamil Nadu) and AIR 1983 SC 463 : (1983 Cri LJ 852) (Jagtar Singh v. State of Punjab). We have perused the facts in those cases wherein the act of the accused was brought down to Section 304 Part II, I.P.C. instead of Section 302, I.P.C. for the reasons that in the midst of sudden quarrel/ altercation and at the spur of moment accused acted by dealing one blow and having no deliberate intention of causing death. But the facts of the case in hand are of different nature. It will be appropriate to make appreciation of the principles of those decisions in the present case. Facts of the present case and the acts done by accused are quite different.

10. Altercations or quarrel had under the mango tree near the house of the accused. Deceased Makhan altercated or quarrelled with accused Kanchan. Kamala Rani came out only when altercations became heated. She never took active participation in the altercations nor threw abusing or filthy words towards accused Kanchan. She came to take away her husband Makhan to the house and virtually dragged him to the house and put him inside and closed the door from inside. It was deceased Makhan who lifted his loongi showing his private parts to accused Kanchan stating what he could do if he (Makhan) would not quit his land. No doubt there was occasion of provocation to accused Kanchan. By that time deceased Makhan was confined by his wife Kamala and by witness Smti Sonamoni Das inside the house. But accused Kanchan armed with dagger came over to the varandah of Makhan's house, forcibly broke open the bamboo door, and at that time Makhan seeing dagger in the hand of accused dealt a blow by

lathi; Makhan had that right as private defence and that blow was not such to make apprehension in the mind of accused for grievous hurt or of death. The provocation was not of the type and there was no such serious apprehension of danger at the moment for which the accused could deal blows by dagger repeatedly on Makhan and then to innocent Kamala Rani. He dealt 3 blows on Makhan of which the first was on the chest and then dealt 2 blows on Kamala of which one was on the chest. The accused had really exceeded much in the case of dealing blows on Makhan and that was intended to finish his life, but he had no occasion or reason whatsoever to deal blows by dagger on Kamala Rani. He acted deliberately and with intention to cause her death. Dealing blows by dagger on the chest on an innocent woman without provocation or any reason and causing death thereby would come within the purview of intentionally causing death punishable under Section 302, I.P.C. The learned Sessions Judge had rightly convicted him under Section 302, I.P.C. we find no reason to interfere.

11. This appeal is dismissed. Conviction under Section 302, I.P.C. is upheld.

Send down the records.

W.A. Shishak, J

12. I agree.

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