

**Julious Tete Vs. State**

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**Court :** Kolkata

**Decided On :** Apr-15-2004

**Reported in :** 2004(3)CHN541

**Judge :** G.C. De and ;Sankar Prosad Mitra, JJ.

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

**Appeal No. :** Cr. A. No. 74 of 1997

**Appellant :** Julious Tete

**Respondent :** State

**Advocate for Def. :** R.P. Bhattacharjee, Adv.

**Advocate for Pet/Ap. :** P.S. Bhattacharyya, Adv.

**Judgement :**

**G.C. De, J.**

1. This jail appeal at the instance of the convict Julious Tete was forwarded to this Court by the Superintendent of Berhampore Central Jail, Murshidabad. The appellant Julious Tete challenged the judgment and order of conviction and sentence dated 8.1.97 passed by the learned Sessions Judge, Jalpaiguri in Sessions Case No. 52 of 1994 (S.T. No. 9/95) arising out of G. R. Case No. 1376

of 1992. By the said judgment the appellant was found guilty under Section 302 IPC, convicted thereunder and was sentenced to suffer R.I. for life and also to pay a fine of Rs. 3,000/- in default to suffer R.I. for one year.

2. Prosecution case in brief is that on getting a written complaint from Dipak Basu, a pharmacist of Kunlai Tea Estate, P.S. Mal, Jalpaiguri FIR 172/92 dated 2.11.92 was drawn under Section 326 of IPC. In course of investigation it was detected that one Bhowa Bhakta with bleeding injuries was sent to Jalpaiguri Sadar Hospital on 1.11.92 night where he succumbed to his injuries on the following day. On receipt of the post-mortem report a prayer was made on 24.9.93 to add Section 304 IPC and the said prayer was allowed. On completion of the investigation chargesheet under Section 326/304 IPC was submitted and the case was committed to the Court of Sessions on 16.12.94.

3. The learned Sessions Judge by order No. 6 dated 28.3.95 was pleased to frame charge under Section 302 IPC against the appellant/accused who pleaded not guilty to the charge. Accordingly ten witnesses including the Investigation Officer were examined by prosecution. However, no defence witness was examined as the defence case is complete denial of the prosecution case.

4. The learned Sessions Judge placed reliance on the eye-witnesses and also on the circumstances and came to the conclusion that charge against the accused was proved and accordingly he found the accused guilty and sentenced him in the manner indicated hereinabove.

5. Mr. P.S. Bhattacharyya, learned Counsel appearing on behalf of the appellant, scanning the evidence of witnesses tried to argue that charge against the accused has not been proved and that there are sufficient materials to find the accused not guilty to the charge. On the other hand, Mr. R.P. Bhattacharjee, learned Counsel on behalf of State supported the prosecution case and also the judgment of the Trial Court. Mr. Bhattacharjee further contended that there is no scope to find the accused not guilty keeping in view the evidence adduced by the eye-witnesses.

6. After hearing the learned Counsel of both sides and on perusal of the material on record we find that the victim Bhowa Bhakta sustained two stab injuries on

1.11.92 night and he was removed to Jalpaiguri Sadar Hospital where he died on 2.11.92. On getting the death news Kotwali P.S. Jalpaiguri, U. D. Case No. 294 of 1992 dated 2.11.92 was started and ASI Narendra Nath Deb Singha (PW. 9) investigated the U. D. case. He also held inquest on the deadbody of the victim, sent the deadbody for post-mortem examination and thereafter submitted his papers which were merged with the Mal P. S. Case No. 172 of 92 at a later stage.

7. It is to be noted that initially FIR was drawn under Section 326 IPC showing the victim Bhowa Bhakta as an accused. But in the written complaint (Ext. 1) it was specifically indicated that accused was Julious Tete and the victim was Bhowa Bhakta. The mistake was detected by the Investigating Officer subsequently and prayed for necessary correction of the FIR. He also in his substantive evidence in course of the trial admitted this mistake. But surprisingly enough he did not pray for inclusion of Section 304 IPC till 24.9.93, although U. D. case was started on 2.11.92 immediately on getting information of death of the victim. Be that as it may, chargesheet was submitted under Section 326/304 IPC.

8. It is sufficiently clear that from the inception of the case it was noticed that the victim Bhowa Bhakta was stabbed and was removed to hospital for treatment. Practically for this reason Section 326 was added in the FIR. But subsequently Section 304 IPC was also added indicating that the Investigating Officer thought the case to be culpable homicide not amounting to murder. But the learned Sessions Judge at the time of framing of charge found prima facie case under Section 302 IPC and the charge was framed accordingly. So let us consider the evidence on record to justify the framing of charge under Section 302 IPC and conviction of the accused thereunder.

9. Autopsy Surgeon (PW. 8) on the basis of the post-mortem report confirmed that the victim died as a result of two stab injuries which may be described as follows :

'1. Incised wound on the back of the lower chest 2 1/2' x 3/4' penetrating inside the chest cavity on the right side for about 4' i.e. deep was about 4'.

2. Incised wound 2/2' x 3/4' x 2' deep on the back of the left loin on the left subcostal region on the lateral vertebral column'.

10. PW. 8 further opined that those injuries could be caused by knife in a standing position of the victim. The description of the injuries are sufficient to indicate that the width of the knife was 2 1/2' having thickness of 3/4'. Of course in respect of the first injury the depth was 4' and for the second injury it was 2'. Both these injuries were on both sides of the waist under chest. It is sufficiently established that the victim died as a result of stabbing injuries.

11. Now we come to the question as to how these injuries actually were inflicted on the person of the victim and under what circumstances.

12. From the evidence of PW. 2, PW. 3 and PW. 4 it appears that at about 9 p.m. the accused came to the courtyard of the said witnesses, dragged the victim and asked PW. 4 as to whether he had eaten up the hen which was stolen by the victim Bhowa Bhakta. As soon as PW. 4 Jiten admitted that Bhowa Bhakta had taken away the hen of the accused, accused stabbed the victim by means of a knife. The learned Trial Court analysed the evidence of these three witnesses and rightly came to the conclusion that both the injuries were inflicted on the person of the victim by the accused.

13. But it is to be noted that the learned Trial Court did not consider the situation in which those injuries were inflicted. The evidence on record indicates that the accused brought the victim to the courtyard for verification as to whether the victim had actually stolen the hen of the accused and whether it was eaten up. As soon as PW. 4 affirmed the allegation, the accused stabbed the victim instantly. This conduct of the accused is sufficient to indicate that on the basis of grave and sudden provocation he lost his power of self-control and thereby inflicted injuries in the spur of the moment. If PW. 4 had not admitted the alleged act of theft by the victim the possibility of inflicting injuries on him at the hands of the accused could be ruled out. Or in other words, the circumstances indicate that the culpable homicide was not amounting to murder as excepted under Section 300 of IPC. Practically judging from this standpoint the Investigating Officer submitted chargesheet under Section 304 IPC. But the learned Sessions Judge did not consider this aspect and misdirected himself in coming to the conclusion that charge under Section 302 of IPC was proved.

14. After a due consideration of the evidence on record and the circumstances we are of the view that injuries were caused with the knowledge that those were likely to cause death so as to bring the alleged offence within the purview of Part II of Section 304 of IPC, Accordingly we find the accused guilty under Section 304(II) of IPC. We deem it proper to convict the accused in this section and to impose sentence accordingly after modifying the life sentence awarded under Section 302 of the IPC.

15. The appeal is accordingly allowed in part.

16. The convict/appellant is found guilty under Section 304(II) of the IPC and he is convicted thereunder. Accused/appellant Julious Tete is sentenced to suffer R.I. for ten years and to pay a fine of Rs. 3,000/- i.d. to suffer R.I. for one year. The conviction and sentence imposed by the Trial Court are modified accordingly. The period of detention in prison during the trial be set off against the substantive sentence under Section 428 Cr. PC.

17. Let this judgment be sent to the Trial Court expeditiously with a direction for taking necessary steps for issuance of modified jail warrant.

**Sankar Prosad Mitra, J.**

18. I agree.

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