

C A U S E T I T L E

Sessions Case No. 48 (K) of 2010

Informant : Khama Das
S/o Late Kajalu Das
R/o Vill.- Pub Maloibari,
P.S.- Khetri
Dist.- Kamrup (Assam)

Accused : Sri Thaneswar Das
S/o Late Kajalu Das
R/o Vill.- Pub Maloibari,
P.S.- Khetri
Dist.- Kamrup (Assam)

A D V O C A T E S

- (1) For the Prosecution : Sri H. K. Deka
Public Prosecutor
- (2) For the Defence : Mr. Rajib Sharma

IN THE COURT OF THE SESSIONS JUDGE, KAMRUP, GUWAHATI**Present:- Dr. (Mrs) I. Shah****Sessions Case No. 48 (K) of 2010**

State of Assam

-Vs-

Thaneswar Das

Charge U/S 302 of I.P.C.

Date of Evidence on : 16-06-2010, 10-08-2010,
22-09-2010, 19-01-2011
and 02-08-2011

Date of Argument on : 03-09-2011

Date of Judgment on : 13-09-2011

J U D G M E N T

The prosecution case in brief is that on 07-12-2009 at about 12-05 midnight Jyotish Kalita informed Officer-in-Charger of Khetri P.S. over phone that his brother Thaneswar Das has killed his another brother Umesh Das by inflicting injuries. The information lodged by Jyotish Kalita was entered in General Diary being G.D. Entry No. 145 dated 07-12-2009. Police moved to the place of occurrence. They found the dead body of the deceased Umesh Kalita kept on a bull-cart in the courtyard of the accused. Inquest on the dead body was held in presence of witnesses. The dead body was sent for post mortem examination. On 07-12-2009, at about 11-30 a.m. Khama Das lodged a formal FIR. Accordingly, police registered a case and on completion of investigation police submitted charge-sheet

against the accused Thaneswar Das U/S 302 of I.P.C. The case was committed for trial.

The accused pleaded not guilty to the charge framed against him U/S 302 of I.P.C. and claimed to be tried.

The prosecution, in order to prove their case examined altogether 8 (eight) witnesses. The accused in his statement recorded U/S 313 of Cr.P.C. denied allegations levelled against him and pleaded that he is innocent. No defence evidence has been adduced.

POINTS FOR DETERMINATION ARE :

1. *Whether the death caused to the deceased homicide in nature ?*
2. *Whether the accused committed the murder with an intention to cause death of the deceased ?*

I have heard the argument placed by the learned counsels for both sides and perused and considered the entire evidence on record.

DECISION AND REASONS THEREFOR :

P.W.-1 Jyotish Kalita stated that on 06-12-2009 at about 10/11 P.M. Sataru Das came to his house and informed that Thaneswar Das killed Umesh Das. P.W.-1 then came to the house of Umesh Das and found the dead body of the deceased Umesh Das placed on a thela in the courtyard. He also noticed injury on the forehead of the deceased. Thereafter, P.W.-1 called VDP president Haren Nath. Police also came and held inquest on the dead body in presence of P.W.-1. He testified his signature on inquest report. In cross-examination, he stated

that his house is at a distance of 200 meters from the place of occurrence. He also stated that he informed the police over telephone about the incident. According to him, Khama Das lodged the FIR on next day on being asked by the police.

P.W.-2 Haren Nath is the brother of the deceased as well as accused. According to him, Jyotish Kalita informed that Thaneswar Das killed his elder brother Umesh Das. Then P.W.-1 came to the house of Umesh Das and show the dead body of deceased on Thela. Inquest was held in his presence. In cross-examination he stated that his house is situated at a distance of one furlong from the place of occurrence and he reached at the place of occurrence at about 10-30 p.m.

P.W.-3 Khama Das who lodged the formal written FIR deposed that Sataru Das informed him that Umesh is lying dead near the boundary of his house. P.W.-3 then came to the place of occurrence and saw the dead body. He stated that his mother Guna Das and wife of accused Bharati Das were crying near the dead body. On inquiry his mother Guna Das and Bharati Das told him that Umesh was found lying unconscious near the boundary fencing. He then lodged the FIR. He also noticed injury of the face of the deceased. In cross-examination, he stated that the ejahar was not read over to him. Police came at night and called him to police station. He along with Jyotish Kalita went to the police station and the ejahar was written by Jyotish Kalita in his own version.

P.W.-4 Sataru Das deposed that on the date of occurrence at about 10/11 P.M. he heard hue and cry in the house of his nephews i.e. deceased and he rushed to their house and saw the dead body of Umesh Das. He also saw

lacerated injury on his head. He removed the injured to hospital on a bull-cart where the pharmacist declared that the injure is dead. He stated that Gunabala Das i.e. mother of the deceased was present at the place of occurrence. But she did not disclose the name of the assailant. According to him, police arrested the accused and disclosed that the accused caused death of the deceased. He was not cross-examined.

P.W.-5 Prabhat Das is relative of the deceased and the accused. He on the date of occurrence at mid night heard hue and cry and came to the house of the deceased. He also saw the dead body of the deceased lying in the varandah. According to him, he could not say how the death of the deceased occurred. He further stated that the mother of the deceased was residing along with the deceased in the same house. Police arrested the accused. In cross examination, he also stated that police informed him that the accused is involved in causing death of the deceased. He further admitted that the deceased was alcoholic and used to pick up quarrel with others.

P.W.-6 Dr. Kanak Ch. Das held inquest on the dead body of the deceased on 07-12-2009 and his findings are as follows.

1. Stab wound of size 3 cm X 1 cm X chest cavity deep, present over the front of the chest left side situated 5 cm left from left nipple and 14 cm below the tip of aerowton. Track of the injury 1st enter through the chest wall, then left lung, pericardium and left ventricle of the heart. Pericardial cavity contains about 500ml of liquid blood. Chest

cavity contains about 1 litre or liquid and clotted blood.

2. Incised wound of size 3 cm X 1 cm X muscle deep, present over the left cheek middle part.

The wearing garments are handed over to escorting constable along with dead body after P.M. examination. Other organs are healthy.

In the opinion of doctor the death was due to shock and hemorrhage as a result of injuries sustained which were antemortem in nature and caused by sharp cutting pointed weapon and the injuries are homicidal. Injury No. 1 is independently sufficient to cause the death of a person in ordinary course of nature. The doctor was not cross-examined.

P.W.-8 Smti. Gunabala Das is the mother of the deceased as well as the accused. She deposed that the deceased Umesh Das was alcoholic. Once after consuming alcohol Umesh Das came and was found lying in front of their house. On that day he did not take his food also. When she came near him, she found that he is not able to speak. She then called the neighbours. She further stated that the accused Thaneswar Das was inside the house. On alarm being raised by her wife of Thaneswar came. She deposed that there was no quarrel between the brothers. She admitted that sons have cultivable land and they use to cultivate the land.

From the evidence of Doctor P.W.-6 and the post-mortem report Ext.-3 it can be concluded that the death of the deceased is homicidal in nature. The witnesses examined by the prosecution have stated that they saw injuries on the face or

forehead of the deceased. But from the post-mortem examination it appears that there was step wound on the chest of the deceased and that step wound was fatal injury. However, there is not dispute that the death of the deceased was homicidal in nature. As regards the involvement of the accused in causing death of the deceased none of the witnesses saw the incident. P.W.-7 the Investigating Officer stated that Jyotish Kalita informed over phone that the accused Thaneswar Das caused death of the deceased. The FIR discloses that the accused committed the death of the deceased but P.W.-2 who lodged the FIR did not witness the occurrence. P.W.-2 was informed by Jyotish Kalita that the accused caused death of the deceased. P.W.-1 Jyotish Kalita stated that Sataru Das informed him that the accused caused death of the deceased. Sataru Das examined as P.W.-4 stated that he saw the dead body of the deceased and the mother of the deceased near the dead body who did not disclosed him the name of the assailant. P.W.-4 has not stated that he reported P.W.-1 or any other witnesses that it was accused who caused death of the deceased. From the evidence of witnesses it appears that mother of the deceased and wife of the deceased were in the house at the time of incident. P.W.-8 mother of the deceased has stated that the accused and his wife was sleeping inside the house. The deceased Umesh Das was alcoholic and on the date of occurrence also he consumed alcohol and was lying in front of the house. He did not even take his food and when she went near him she found that he is unable to speak. Thereafter, she raised alarm. Wife of accused came hearing the alarm raised by her. At the relevant time, the accused Thaneswar was sleeping inside the house. She further stated that there was no quarrel between the brothers.

The evidence adduced by the prosecution nowhere discloses that any witnesses saw the incident. The prosecution case therefore raised on circumstantial evidence. The only circumstance appearing against the accused is that he was residing along with the deceased in the same house and from evidence of Investigating Officer it appears that when he arrived at the place of occurrence he found the accused hiding himself behind the back side of the house and then he was arrested. Another circumstance appearing against the accused is that P.W.-1 was told by P.W.-4 that it was the accused who caused the death of the deceased and another circumstance against the accused is that the accused had been implicated in the FIR.

It has been constitutently held by Hon'ble Supreme Court that when a case raised sparely on circumstantial evidence the ingredients can be justified only when on incriminating facts circumstances are found to be in compatible with nuisance of accused or dripped any other persons (Hukam Sing Vs State of Rajasthan AIR 1977 SC 1063, Eradu and others Vs State of Hyderabad AIR 1956 SC 316, Balwinder Singh Vs State of Punjab AIR 1987 SC 350, Ashok Kr. Chatterjee Vs State of M.P. AIR 1989 SC 1890, Sarad Bidhi Chand Sarada Vs State of Maharastra AIR 1984 SC 1622).

Here in this case, although the accused had been implicate in the FIR the informant P.W.-2 has stated that the FIR was not written as per his direction. It was written by P.W.-1 according to his own way. Moreover, P.W.-2 was informed by P.W.-1 that accused committed the offence and P.W.-1 in this case is reported by P.W.-4. As per P.W.-4 never

stated that he informed P.W.-1 that it was the accused who committed the offence. From the evidence of P.W.-8 the mother of the deceased had clearly deposed that the deceased was alcoholic and after consuming alcohol he was found lying in front of the house. When none of the witnesses saw the incident and where there is evidence that deceased was alcoholic and he used to pick up quarrel with others it can not be safely inferred that the injuries caused to him was caused by the accused and none others.

In view of the above, I find that the prosecution has failed to prove its case against the accused Thaneswar Das. Hence, the accused Thaneswar Das is entitled to get benefit of doubt. The accused is therefore acquitted and set him at liberty forthwith.

Given under my hand and seal of this court on this 13th day of September, 2011.

Dictated & Corrected by me

Sessions Judge,
Kamrup, Guwahati

Sessions Judge,
Kamrup, Guwahati

APPENDIX

Witnesses for the prosecution:

- P.W.-1 Jyotish Kalita
- P.W.-2 Haren Nath
- P.W.-3 Khama Das
- P.W.-4 Sataru Das
- P.W.-5 Prabhat Das
- P.W.-6 Dr. Kayak Ch. Das
- P.W.-7 Anil Kr. Bora
- P.W.-8 Gunubala Das

Exhibits for the prosecution:

- Ext.-1 Inquest Report
- Ext.-2 Ejahar
- Ext.-3 Post-Mortem Report
- Ext.-4 Command Certificate
- Ext.-5 Dead Body Challan
- Ext.-6 Forwarding Report
- Ext.-7 Certificate copy of Khetri P.S. G.D. Entry
No. 145 dated 07-12-2009
- Ext.-8 Sketch Map
- Ext.-9 Charge-Sheet

Sessions Judge
Kamrup, Guwahati