

(2008) 06 GAU CK 0015

Gauhati High Court

Case No: None

Naren Tanti

APPELLANT

Vs

State of Assam

RESPONDENT

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**Date of Decision:** June 30, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302

**Citation:** (2008) 3 GLT 149**Hon'ble Judges:** P.K. Musahary, J; Aftab H. Saikia, J**Bench:** Division Bench**Final Decision:** Dismissed

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**Judgement**

Aftab H. Saikia, J.

Heard Ms. S. Khalaniar, learned Counsel who has been appointed as Amicus Curiae in place of earlier appointed Amicus Curiae Mr. P. Katakty who is found to be absent when the matter is taken up for hearing. Also heard Mr. K. C. Mahanta, learned Public Prosecutor, Assam.

2. This Criminal Jail Appeal has been preferred by the appellant assailing the Judgment and Order dated 24.06.02 passed by the learned Sessions Judge, Golaghat, in Sessions Case No. 85/01 whereby he was convicted u/s 302 IPC and sentenced to imprisonment for life and to pay a fine of Rs. 1000/-, in default to pay fine, to undergo rigorous imprisonment for two months.

3. The brief facts as unfolded by P.W. 6, Topi Tanti in the "Ejhar" dated 17.11.00 lodged by him with the Golaghat Police Station are that around 7:00 O'clock, last night on 16.11.2000 in the absence of anyone in the house, somebody caused the death of his father Bajo Tanti (hereinafter referred to as "the deceased") by assaulting him with sharp weapon in his head and by setting fire on his entire person on the bed inside the house. As a result of the said fire, the entire person of

his father and the clothes of his bed were burnt. It was stated in the Ejahar that he found his father in dead state.

4. At the very outset, the injuries inflicted on the person of the deceased as found by P.W. 1, Dr. Dilip Deka who performed the postmortem on the body of the deceased may be noticed which are as under:

Injuries:

1) Burnt injury present almost all over the body except face and sole (90%). Body is charred. No blister present.

2) Incised wound present from occipital region to the left side on the neck of size 5" x 1" x 1" penetrating to the great vessels of the left side of the neck.

3) Incised wound present over the left parietal bone of size 4" x 1/2" x 1/2". There was fracture of parietal bone. Membrane and brain matter was lacerated. Clot present under the injury.

4) Walls - Burnt, ribs and cartilages - healthy.

5) Pleura, larynx, right lung, left lung, pericardium - congested.

6) Heart - empty.

7) Liver, kidneys, spleen, bladder, organs of generation - congested. Stomach - empty, Small intestine - healthy and contains undigested food particles, Large intestine - healthy and contains faecal matters.

8) Injury No. 1 is post mortem in nature, injury No. 2 & 3 are ante-mortem in nature.

5. It is seen from the above medical evidence that the deceased sustained two incised injuries- one on the left side of the neck and the other on left parietal bone. As per Doctor's opinion, the death was due to shock and haemorrhage as a result of the incised injuries so inflicted upon the body of the deceased.

6. Admittedly, there was no eyewitness to prove the incident and basically the entire case rested on the circumstantial evidence.

7. The prosecution adduced as many as seven witnesses to establish its case against the appellant. Amongst those witnesses, two were official witnesses, namely, P.W. 1 (Dr. Dilip Deka) who conducted the postmortem on the deceased as already indicated above and P.W. 7 (Garga Narayan Bora), the Investigating Officer (I.O.).

8. P.W. 2, Bishnu Sagar deposed that on being informed by the nephew of the deceased, he went to the place of occurrence and found the deceased lying dead on the bed and dead body was burnt down. Then he came to the Golaghat Police Station along with the deceased's nephew. They took the police along with them and inquest was held on the dead body. He was the signatory on the inquest report.

9. Sri Arun Tanti, who was the brother-in-law of the deceased, as P.W. 3 testified that on the day of occurrence he found his brother-in-law, the deceased was singing at his courtyard and Naren, the accused was also singing at his home as their residence were in close proximity. In the course of singing, the deceased expressed why the accused brought back his wife who eloped with other person. At this, the appellant told his brother-in-law in anguish that he would see him. Thereafter, Topi Tanti, the deceased's son, P.W. 6, the informant, who stayed in a neighbour's house saw fire broke out in the house of the deceased. He came to him and woke him up saying that the accused cut his father and set fire on him. Going there, he saw the deceased wearings were still in fire so he poured water. He saw brother-in-law in the midst of fire. When they raised alarm, the neighbouring people came there. Ghunidhar, Kanda (P.W. 5), Lame Tanti (PW. 4), Nabib and Meghnad etc. were amongst those. PW. 6, Topi Tanti told before the people that Naren killed PW. 3's brother-in-law. The accused at that time was at home. When Topi Tanti told the people that accused/Naren cut his father, the accused came to cut him with an axe. On being obstructed by the people, he could not assault Topi Tanti. This witness saw four injuries on the head and burn injuries on the body of the deceased.

In cross, this witness deposed that he came to know about this on being told by Topi Tanti and he denied the suggestion that Tanti did not tell him that Naren did not kill his brother-in-law.

10. The another witness, namely, Lame Tanti who was examined as PW. 4, in his evidence stated that the houses of the accused Naren, the deceased, Kanda Tanti (PW. 5), Arun Tanti (PW. 3) were contiguous. His house was at a little distance. At the night of occurrence, Kanda (PW. 5) the Gaonburah of their village, came and informed him that the deceased was killed and burnt inside the house. He came along with Gaonburah and saw many people gathered there. Deceased's son Topi Tanti, PW. 6 was also present there. In the following morning, Topi told him that Naren killed his father. Topi told him that he had seen Naren coming out from the house of the deceased. The next morning, Topi lodged an "Ejahaar" with the police. Accordingly, police came to the place of occurrence. He saw injuries on the dead body and burn injuries.

11. PW. 5, Kanda Nanda, deposed that on the day of occurrence, one Gunidhar by name came to his house and informed that someone cut the deceased and had set fire to the person inside the house. Thereafter, he went along with Gunidhar to the place of occurrence and found the dead body of the deceased lying on bed inside the house. He saw cut injuries in the head and blood splattered over the floor. At the place of occurrence, he found the deceased's son Topi Tanti (PW. 6) and Arun Tanti (P.W. 3) present there. On being asked Topi told that he had seen fire on his father's person when he came out and that Naren had killed him.

12. The informant, Topi Tanti (PW. 6), the son of the deceased, in his deposition, stated that on the night of occurrence the accused cut his father with a "dao" while

he was sleeping and set fire to his body. He was sleeping at the house of one Meghnad. The fire woke him up from sleep. When he went on a run towards their house, he saw accused Naren had been coming out of their house on a run taking a "Khukri" (a sharp weapon) in his hand. He then raised alarm crying that his father had been cut by Naren. The paternal uncle of PW. 6, Arun Tanti put out the fire and then they saw his father lying in the bed with cut injuries. Naren attempted to assault him with an axe when he raised alarm. Naren told that he would kill him too the way he killed his father.

In cross, it is deposed by this witness reiterating his evidence in chief that he saw accused Naren coming out of their house with a "khukri" in his hand and he denied the suggestion that accused Naren did not tell him that he would kill him the way he killed his father.

13. PW. 7, Garga Narayan Bora, the I.O. evidenced that he started the investigation on being entrusted with the same and proceeded to the place of occurrence. He held inquest on the dead body of the deceased and found cut injuries in the head of the deceased. He arrested accused Naren and he also examined the witnesses Topi Tanti and Arun Tanti and on completion of the investigation, he submitted chargesheet against the appellant.

14. During examination u/s 313 Cr.P.C., the appellant was being put all questions pertaining to circumstances which according to the prosecution led to prove of the guilt against the appellant, to which he replied that he was innocent.

15. Having meticulously considered the entire testimony of the witnesses including the medical evidence adduced by P W. 1, learned Sessions Judge, Golaghat, found the appellant guilty of the offence of killing the deceased and convicted and sentenced him as indicated above.

16. We have scrupulously and thoroughly scanned the entire material evidence on record including the testimony of PW. 1 who conducted autopsy as well as the statement of the appellant recorded u/s 313 Cr. PC. and also heard learned Counsel for the parties.

Since the entire case has been based on circumstantial evidence, on perusal of the testimony of all the witnesses, we are of the firm view that the circumstances herein projected by the prosecution created a direct link between the accused and the crime and complete the chain to prove the involvement of the appellant in the crime committed.

17. In a case of [Sharad Birdhichand Sarda Vs. State of Maharashtra](#), the Apex Court while dealing with the scope and ambit of conviction on the basis of circumstantial evidence, laid down in paragraph 15, the conditions precedent for such conviction on the circumstantial evidence as follow:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in [Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra](#), where the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

18. Having regard to the settled law on reconviction on the basis of circumstantial evidence including the five golden principles propounded by the Supreme Court above quoted and also upon considering the facts and circumstances of the case in its entirety so structured on the testimony of the witnesses above mentioned, we are of the view that the impugned conviction and sentence handed down by the learned Sessions Judge deserve no interference. We are in full agreement with the views expressed and findings recorded by the learned Sessions Judge, Golaghat, and thereby we do confirm the impugned conviction and sentence imposed on the appellant.

19. In the result, this appeal fails and stands dismissed.

20. Send down the LCR forthwith.

21. Before parting with the records, we would like to put on record our appreciation to Ms. S. Khataniar, for her valuable assistance rendered as Amicus Curiae in arriving at the aforesaid decision. Accordingly, we order that she is entitled to professional fees which is quantified at Rs. 5000/-.