

(2003) 05 GAU CK 0036

Gauhati High Court**Case No:** Criminal Appeal No. 160 (J) of 1997

Bhuban Konwer

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: May 5, 2003**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 304

Citation: (2003) 3 GLR 529**Hon'ble Judges:** P.G. Agarwal, J; Iqbal Ahmed Ansari, J**Bench:** Division Bench**Advocate:** P.K. Mushahary, Amicus Curiae, for the Appellant; PP, for the Respondent

Judgement

P. G. Agarwal, J.

The appellant before us stands convicted u/s 304 Part-I, IPC, and he has been sentenced to imprisonment for ten years and to pay a fine of Rs. 1,000 in default further imprisonment for six months by the Sessions Judge, Sibsagar, in Sessions Case No. 45(S-S) of 1995 arising out of G. R. Case No. 57 of 1995.

2. The prosecution case as unfolded by the wife of the accused is that on 15.1.1995 while she was at her parents place, the accused went there to bring her back and thereafter while some altercation was going on between them, accused snatched away his three months old baby from her lap and dashed the baby on the ground as a result of which the baby died. The FIR was lodged naming the accused. Dr. Dilip Gogoi (PW-5) held the autopsy over the dead body and found as to follows :

"(1) Fracture of cranium with exposure of brain matters.

(2) Brain membranes exposed and healthy but decomposed.

(3) Brain and Spinal cord-

Brain is exposed, decomposed and damaged.

Therax :-

Fracture of the 6th, 7th and 8th Ribs on left side.

Left lung-Ruptured by the protruding broken ends of 6th, 7th and 8th ribs.

All other organs :- Healthy.

Disease and deformity :- Nil

All injuries are ante-mortem caused by blunt weapon."

In the opinion of the doctor, the baby died due to coma as a result of injury on the brain and head. He further states that the injuries may be caused by thrashing the baby against the ground.

3. The doctor's evidence has not been challenged and the entire prosecution case rests on the testimony of the eye witness. PW-1 is Ms. Meera Konwer. She has categorically stated that when the incident took place, she was sitting in the room alongwith the accused and the accused forcibly took the baby from her lap and thrashed the baby on the ground causing the death. Besides the oral testimony of the eye witness, we find that the accused has made a confessional statement u/s 164, Cr.P.C. Ext. 3 is the said statement and the relevant portion of which reads as follows :-

"15 days before the day of occurrence my (wife) Smt. Meera Knowar had left my home for Bharaluwa Gaon and stayed there at my father-in-law's. I came to my father-in-law's house on 14.1.1995. On the following day, i.e., on 15.1.1995, my wife and the inmates of my father-in-law's house scolded me with filthy language and made me to drink. And she gave my three month old son on my lap. Under the influence of liquor, I killed my son by dashing (to the ground). This is all about the occurrence."

PW-6 is the Magistrate who recorded the confession and we find that there was no meaningful cross examination to challenge the confession as such.

4. The trial court had relied upon the evidence of the eye witness as well as the judicial confession to enter into the order of conviction and we find that the above material was sufficient to establish the guilt of the accused. Admittedly, the appellant being the father of the child had no intention to kill his baby and he has taken the plea as he was under the influence of liquor and having row with his wife, out of anger and heat of the moment, he committed the act resulting the death of the baby.

5. Hence, the conviction of the accused appellant u/s 304 Part-1, IPC, stands affirmed. On perusal of the record, we find that the accused appellant is in jail custody since 16.1.1995, that is almost eight years and his wife has already married another person. Considering all these aspects of the matter, the sentence is reduced

to the imprisonment already undergone by the accused appellant and the accused appellant shall be released from the jail custody forthwith, if not wanted in any other case.

6. The appeal stands disposed of accordingly. Send down the records.