

GAHC010182172023



2025:GAU-AS:13372-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/93/2023

BANDHANA KANDULANA AND ANR.
S/O LATE LAJAK KANDULANA,
R/O BORGHULI, P.S.- SALONIBARI, P.O.- BORGHULI, DIST.- SONITPUR,
ASSAM, PIN- 781354.

2: RINA KANDULANA
R/O BORGHULI
P.S.- SALONIBARI
P.O.- BORGHULI
DIST.- SONITPUR
ASSAM
PIN- 781354

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY P.P., ASSAM.

2:SUNITA KANDULANA
W/O SALAI KANDULANA

R/O BORGHULI
P.O. AND P.S.- TEZPUR
DIST.- SONITPUR
ASSAM
PIN- 784001

Advocate for the Petitioner : MRS. P B BORDOLOI,

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE ANJAN MONI KALITA

For the appellants : Mrs. P. B. Bordoloi, Legal Aid Counsel
For the respondents : Ms. A. Begum, Addl. P.P., Assam
Date of hearing : 24.09.2025
Date of Judgment : 26.09.2025

JUDGMENT AND ORDER (CAV)

(M. Zothankhuma, J)

1. Heard Mrs. P.B. Bordoloi, learned Legal Aid Counsel for the appellants. Also heard Ms. A. Begum, learned Addl. P.P., Assam.
2. This appeal is directed against the impugned judgment and order dated 24.05.2023, passed by the learned Sessions Judge, Sonitpur, Tezpur in Sessions Case No.78/2012, arising out of Tezpur P.S. Case No.294/2011, by which the appellants have been convicted under Sections 447/34, 323/34 and 302/34 of the IPC. The sentences were directed to run concurrently.
3. The prosecution case, in brief, is that an FIR dated 27.03.2011 had been submitted by the prosecution witness No.1 (PW-1), stating that the appellants along with their son Johan Kandulana forcibly entered into their home and assaulted her husband, father-in-law Shri Badur Kandulana and brother-in-law with *dao* and *sticks*. As a result, her husband sustained serious injury, while the father-in-law sustained head injury. Consequently, Salonibari O.P. GDE No.

566 dated 27/03/2011 was registered at 11 a.m. and the same was forwarded to the Officer-in-Charge of the Tezpur Police Station for registering it. Thus, Tezpur P.S. case No. 294/2011 under Sections 447/326/307/34 of the IPC was registered vide GDE No. 1419 dated 27/03/2011.

4. PW-10 was appointed as the Investigating Officer (IO) to investigate the case. During investigation of the case, the father-in-law of PW-1 expired on 01.04.2011. After investigation of the case by the IO (PW-10), the IO found prima facie case against the appellants including their son Johan Kandulana under Sections 447/323/302/34 of the IPC.

5. The learned trial Court thereafter framed charges against the appellants under Section 447/34, 323/34 and Section 302/34 of the IPC, to which the appellants pleaded not guilty and claimed to be tried. No charge has been framed against the co-accused Johan Kandulana, who was the son of the appellants, inasmuch as, he was absconding and the Police were unable to trace him out.

6. The learned trial Court thereafter examined 10(ten) prosecution witnesses and 1(one) Court witness. The appellants were examined under section 313 Cr.P.C., wherein they denied all the evidence that had been adduced against them. The learned trial Court thereafter came to a find that the appellants were guilty of the offences under section 447/34, 323/34 and 302/34 and convicted and sentenced them as follows :-

“i) Section 447/34: Simple imprisonment for 1 (one) month each by accused persons namely, Rina Kandulana and Bandhana Kandulana but no fine is imposed.

ii) Section 323/34: Simple Imprisonment for 3 (three) months each but no

fine is imposed.

iii) Section 302/34: Rigorous Imprisonment for life and to pay fine of Rs. 5,000/- (Rupees Five Thousand) only each by accused persons namely, Rina Kandulana and Bandhana Kandulana i/d to undergo 3 (three) months simple imprisonment."

7. Being aggrieved, the appellant Nos.1 and 2, who are husband and wife, have filed the present appeal.

8. The learned counsel for the appellants submits that there was no weapon recovered by the Police to prove that the appellants had assaulted the deceased with weapons. She submits that the evidence, in fact, does not indicate that there was any assault made by the appellants on the deceased. The evidence adduced by the prosecution witnesses only points to the guilt of the son of the appellants, i.e. Johan Kandulana.

9. The learned Legal Aid Counsel further submits that there are sufficient contradictions in the evidence of the prosecution witnesses to enable the learned Trial Court to dismiss the prosecution case, inasmuch as, there was no corroboration of the testimony of the prosecution witnesses by other witnesses. She also submits that though PWs-2 & 4 had claimed to be the eye witnesses, a reading of their testimony show that they were not eye witnesses to the assault made on the deceased. She also submits that the evidence of PWs-1, 3 & 5 were all hearsay evidence.

10. The learned Legal Aid Counsel further submits that when the evidence of the witnesses show that the incident had occurred at night and the witnesses could not recognize the persons present at the place of occurrence, there was

no proof that the appellants were present at the place of occurrence at the time of the incident. She thus submits that when there are two views possible on a particular testimony in issue, the view in favour of the accused would have to be accepted by this Court.

11. The learned Legal Aid Counsel also submits that as the appellants are above 70 years of age, the learned Trial Court while passing the sentences upon the appellants, should have considered their age and awarded the sentence proportionately to their age. The appellants' counsel submits that as the appellants are old people and the incident had allegedly taken place sometime in the year 2011, this Court should reduce the sentence of the appellants, if the present appeal fails, as the appellants have suffered tremendous mental trauma and anguish during these years. She accordingly submits that the impugned judgment and order should be set aside and the appellants should be acquitted.

12. Ms. A. Begum, learned Addl. P.P., on the other hand, submits that there are 4 injured witnesses, who had suffered the assault by the appellants and their son on the fateful night in the house of the deceased. They are PWs-1, 2, 4 and CW-1. She submits that PWs-1, 2, 4, 7 and CW-1 were eyewitnesses to the assault on the deceased. She also submits that the injured witnesses, i.e PWs-1, 2, 4, 7 and CW-1 were treated by PW-6, who was a Doctor.

13. The learned Addl. P.P. further submits that the ages of the appellants cannot be beyond 70 years as on date, in view of the fact that the age of the appellant No.1 was 60 years on 12.10.2018, when his examination under Section 313 Cr.P.C. had been made. Similarly, the age of the appellant No.2 was 50 years on 12.10.2018, when she was examined under Section 313

Cr.P.C. As only 6 years having passed since then, the appellant No.1 could not be beyond 67 years and the appellant No.2 could not be beyond 57 years as on date. The learned APP submits that as there are eyewitnesses to the crime in question, besides there being injured witnesses, there is no infirmity with the impugned judgment. Accordingly, the appeal should be dismissed.

14. We have heard the learned counsels for the parties.

15. The evidence of PW-1 (informant) is to the effect that the appellants and their son Johan Kandulana had come to their house on 26.04.2003, at around 9 p.m and assaulted her father-in-law, Badur Kandulana with an axe. Johan Kandulana had hit the deceased with an axe. Further, there was a land dispute between her deceased father-in-law and the appellant No.1, who were brothers. PW-1 stated that she had recognized the accused persons in the darkness of the night, with the light given off by a lamp (diya). The deceased was in an injured condition at that time. Thereafter, he was taken to Civil Hospital, Tezpur and thereafter, to Mission Hospital at Tezpur. He was again shifted to GMCH. However, he succumbed to his injuries after three days. PW-1 further stated that her husband, Selai Kandulana, Court Witness No.1 (CW-1), had also suffered injuries and had been treated in Kanaklata Civil Hospital, Tezpur and that her husband had now recovered from his injuries. In the cross-examination of PW-1, PW-1 had denied the suggestion that she did not tell the police that she had seen the accused persons assaulting her father-in-law with an axe.

On considering the testimony of PW-1 with that of the testimonies of other witnesses and keeping in view the connected documents and the facts of the

case, this Court finds that an unintentional mistake seems to have occurred regarding the recording of the date of the incident during the testimony of PW-1, which is actually 26.03.2011 and not 26.04.2003.

16. The evidence of PW-2 is to the effect that there was a land dispute between the family of the appellants and the deceased, who are brothers. The appellants and their son Johan Kandulana came to their house and hit his deceased father and brother (CW-1) with an axe, due to which the deceased was taken to a hospital. In his cross-examination PW-2 has not budged from his testimony, which is to the effect that the appellants and Johan Kandulana had assaulted the deceased with an axe and that they had also assaulted his elder brother, Selai Kandulana, even though suggestions to the contrary were put to PW-2.

17. The evidence of PW-3 is only hearsay evidence, as his entire deposition is based on what he had heard from others.

18. The evidence of PW-4 is to the effect that he knew both the family of the appellants and the deceased and that when he had rushed to the house of the appellants, he saw the appellant No. 1 hitting the head of the deceased with a *dao*. He also saw the appellant No.1 and his son, Johan Kandulana, who was absconding, together hitting Selai Kandulana (CW-1) on his face with *daos*. He further stated that he saw the entire incident from the light given off by a candle. In his cross-examination, PW-4 stated that he saw the appellant No. 1 inflicting a *dao* blow on the head of the deceased from behind.

19. The evidence of PW-5 is hearsay evidence, as the same is based on the information received by him from others.

20. The evidence of PW-6, who is a Medical Officer, is to the effect that he had examined three injured persons, i.e. Smt. Sunita Kandulana (PW-1), Sushil Hora (PW-7), Ram Kandulana (PW-2).

21. The opinion of PW-6, to the injuries caused to PW-1, PW-7 and PW-2, is to the effect that the medical examination was conducted on 27.03.2011 at around 1 a.m. The injuries were approximately 24 hours old, simple in nature and caused by a blunt object.

22. The evidence of PW-7, who is an eye witness, is to the effect that he was sitting in the house of the deceased, when an altercation ensued between the deceased and the appellant, including Johan Kandulana. Thereafter, Johan Kandulana assaulted the deceased on his head with a *dao*. Johan Kandulana also assaulted Selai Kandulana (CW-1) on his face with the *dao*. The deceased thereafter fell down and blood was oozing out from his injuries. Selai Kandulana (CW-1) also sustained injuries on his face and blood was oozing out from his injury. The appellant No. 1 and the appellant No. 2 were instigating Johan Kandulana to assault the deceased Badur Kandulana. PW-7 further testified that he had tried to prevent the assault.

23. The evidence of PW-8 is to the effect that he was working as a Medical and Health Officer at GMCH on 01.04.2011 when he conducted the autopsy on the body of the deceased. The finding of PW-8, on the injuries sustained by the deceased, is to the following effect:-

“Injuries:

1. A stitch wound over the right parieto temporal area of crescentic shaped. 13 cm long and stitch with 16 Nos of stitches. Anterior end of the

wound lies 15 cm right of mid line and 5 cm above the right tragus. Posterior end of the wound lies 6 cm right of mid line. On removal of the stitches margins were regular and healing was seen at the base. (surgically made wound).

2. A stitch wound lying 5 cm below injury No. 1, 5 cm long and stitch with 5 Nos. of stitches. On removal of the stitches margins were found irregular and crossing over of hair was seen across the wound. Healing was seen at the base.

3. Partially healed abrasion of size 1 cm x 1 cm is present over upper 1/3 rd of front of left leg is lies 5 cm blow the left knee joint.

4. On the deflection of the scalp, contusion was present over right temporal, right parietal and right occipital areas.

5. An oval shape gap of size of 5 cm x 4 cm was present over right parietal and temporal bones lying 5 cm above right mastoid process and 2 cm below right parietal eminence margins of the gap are regular. (surgically made).

6. Fissured fracture of length 3 cm was present over right temporo parietal bone extending from lower margin of injury No. 5 in a downward and forward direction.

7. Fissured fracture of length 8 cm was present over right temporo parietal bone lying 2.5 cm behind injury No. 6 and extending downwards and forwards from Injury No. 5 upto the right middle cranial fossa.

Membranes:

Congested and diffused sub-dural haemorrhage was seen bilaterally.

Brain:

Congested:"

24. In the opinion of PW-8, the cause of death was as a result of the injuries sustained on the head of the deceased, as described in the autopsy report. All injuries were ante-mortem and caused by a blunt force impact except injury numbers 1 & 5.

25. The evidence of PW-9 is to the effect that he was the second Investigating Officer, who had submitted the charge-sheet, while the evidence of PW-10, who was the first Investigating Officer, is to the effect that he had investigated the case and recorded the statement of the witnesses etc.

26. On perusal of the evidence adduced by the learned Trial Court, we find that there has been no recovery of the weapons used for assaulting the deceased and the other family members of the deceased. It is clear from the evidence that there has been injuries caused only to the family of the deceased and no injury has been caused to the appellants and Johan Kandulana. Johan Kandulana, the son of the appellant Nos.1 & 2 has also absconded after the assault made on the family of the deceased and is apparently untraceable till today. The evidence of the eyewitness Nos.1, 2, 4 & 7 and CW-1 is to the effect that the deceased was attacked with a dao by the son of the appellant No.1, i.e Johan Kandulana. The assault on CW-1 had also been made by Johan Kandulana. Though the evidence of PWs.1, 2, 4, 7 & CW-1 is that the deceased was assaulted by the appellants. The evidence of PW-4 is that the appellant and Johan together struck the face of CW-1 and the appellant hit the head of the deceased with a dao.

27. On considering the testimony of the eyewitness PWs-1, 2, 7 & CW-1, we are of the view that even though no weapons had been recovered by the police, the assault on the deceased and CW-1 by appellant No.1 has been proved. We also do not find any major contradictions/discrepancies in the evidence of the prosecution witnesses.

28. On considering all the above facts, we do not find any ground to come to any other conclusion, except the fact that the death of the deceased had also

been caused due to the action of the appellant No.1. Accordingly, we do not find any ground to interfere with the finding of the learned Trial Court with regard to the conviction of the appellant No.1 under Sections 447/34, 323/34 and 302/34 of the IPC. The above being said, the only evidence adduced against the appellant No.2 is the testimony of PW-7, who has stated that- "Rina and Bandhan Kandulana were instigating Johan Kandulana to assault Badur Kandulana."

29. In the examination of the appellants under Section 313 Cr.P.C., the appellants have given a blanket denial of their involvement in the crime, by stating that the statements made by the witnesses were false statements. In the case of ***Vahitha Vs. State of Tamilnadu***, reported in ***(2023) 11 SCC 338***, the Hon'ble Supreme Court has held that it is a settled principle of law that the obligation to put material evidence to the accused under Section 313Cr.P.C. is upon the court. One of the main objects of recording of a statement under this provision of Cr.P.C. is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. In the present case, though an incriminating inference can be drawn against the appellants due to their blanket denial of the evidence adduced against them. However, no inference is required to be made in this case due to the fact that there were eyewitnesses to the crime. The fact of the appellant No.1 having assaulted the deceased with his son with a weapon having been proved, the appellant No.1 was liable for the death of the deceased.

30. On considering the above reasons and keeping in view the fact that there

is no other incriminating evidence against the appellant No.2, except the evidence that the appellant No.2 was instigating her son, we are unable to come to a conclusion that the appellant No.2, could be said to have any common intention along with the appellant no.1 and Johan Kandulana, to kill the deceased.

31. In the case of ***Kartik Malhar Vs. State of Bihar***, reported in ***(1996) 1 SCC 614***, the Hon'ble Supreme Court has held that it is open to the courts to record a conviction on the basis of the testimony of a single witness, provided the evidence of that witness is reliable, unshaken and consistent with the case of the prosecution. In the instant case, there are as many as 4(four) eyewitnesses to the assault on the deceased, which had led to his death. Further, there are 4 injured witnesses, who are PWs-1, 2, 7 & CW-1. Though the houses of the appellant No.1 and the deceased, who are brothers, were apparently adjacent to one another, it cannot be said that there was no criminal trespass by the appellant Nos. 1 & 2 and their son, inasmuch as, the appellant No.1 and his son had apparently assaulted the deceased, in the house of the deceased, with the appellant No.2 in tow. Thus, though the intention of the appellant No.2 may not have been to kill the deceased, the same does not appear to be true in respect of the appellant No.1, keeping in view that the fact that they had a dispute over property. As there were eyewitnesses to the assault by the appellant No.1 not only on the deceased, but also on CW-1, as can be seen from the evidence of PW-4, who had stated that the appellant No.1 and Johan Kandulana had dealt *dao* blows on CW-1, we do not find any infirmity with the conviction of the appellants under Section 323/34 of the IPC. However, there is nothing to indicate that the appellant No.2 acted in furtherance of a common intention to voluntarily cause hurt upon CW-1 or other injured

witnesses or in the murder of the deceased. As such, the conviction of the appellant No.2 under Sections 323/34 and 302/34 of the IPC is not sustainable. The same are accordingly set aside. However, we do not find any reason to interfere with the conviction of the appellant No.2 under Section 447/34 of the IPC.

32. In view of the reasons stated above, we do not find any grounds to interfere with the conviction and sentence of the appellant No.1 under Sections 447/34, 323/34 and 302/34 of the IPC, passed by the learned Trial Court. Accordingly, the respondents are directed to release the appellant No.2 as and when the period of sentence passed on the appellant No.2 under Section 447/34 of the IPC has been completed by her, i.e. simple imprisonment for 1(one) month.

33. The appeal is accordingly disposed of.

34. Send back the TCR.

35. In appreciation of the assistance provided by Mrs. P.B. Bordoloi, learned Legal Aid Counsel, her fees should be paid by the Assam State Legal Services Authority.

JUDGE

JUDGE

Comparing Assistant