

GAHC010235992019



2026:GAU-AS:1049-DB

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

Case No. : Crl.A./176/2021

SANKAR NARAYAN NANDI
S/O- SUBHENDRA NARAYAN NANDI,
R/O- QTR. NO. 180B, GOSALA,
P.S.- JALUKBARI, DIST- KAMRUP(M).

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM.

Advocate for the Petitioner : MD. A H LASKAR, MR D J HALOI,MR. S A HUSSAIN,MR S DAS

Advocate for the Respondent : PP, ASSAM,

- B E F O R E -

**HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

For the Appellant(s) : Md. A H Laskar, Mr. S Das,
Mr. S A Hussain, Mr. D J Haloi,
Advocates.

For the Respondent(s) : Ms. A Begum, APP, Assam.

Date on which judgment is reserved : **06.01.2026**

Date of pronouncement of judgment : **30.01.2026**

Whether the pronouncement is of the
operative part of the judgment ? : **N/A**

Whether the full judgment has been
Pronounced : **Yes**

JUDGMENT & ORDER (CAV)

(M. Zothankhuma, J)

Heard Mr. S Das, learned counsel for the appellant. Also heard Ms. A Begum, learned Additional Public Prosecutor, Assam for the State.

2. This appeal has been filed against the impugned judgment dated 13.07.2018 passed by the learned Sessions Judge, Kamrup (Metro), Guwahati in Sessions Case No. 342/2016, by which the appellant has been convicted under Section 302 IPC for killing his mother with a sharp edged weapon (*Bothi Dao*) which is used for cutting vegetables, fish etc.

3. The appellant's counsel submits that the appellant's challenge to the impugned judgment is firstly on the ground that the appellant did not kill his mother and in this respect, he has relied upon the explanation/answers given by the appellant in his examination under Section 313 CrPC to question numbers 11, 12 & 15. The alternative challenge made by the appellant to the impugned judgment is that, even though the evidence of PWs- 5 & 7 appears to prove the fact that the appellant had killed his mother, the conviction of the appellant could not have been done under Section 302 IPC, inasmuch as, there was no premeditation and/or intention to kill his mother. The act of killing his mother had been made due to a grave and sudden provocation under the influence of

alcohol and as Exception-4 to Section 300 IPC was attracted to the facts of the case, the charge under Section 302 IPC should be altered to Section 304 Part-II IPC, as at best, the conviction could only have been made under Section 304 Part-II IPC. He thus submits that when the evidence shows that the death of the mother was due to a grave and sudden provocation, which resulted in a fight between the appellant and PW-7 (brother of the deceased), resulting in the death of the mother, the complete chain of events could have only led to the conviction of the appellant under Section 304 Part-II and not under Section 302 IPC.

4. In support of his submission that the appellant could not be said to be a reasonable person in the ordinary sense of the term as he was intoxicated, thereby attracting Exception-4 to Section 300 IPC, he has relied upon the Division Bench judgment of this Court in the case of ***Nipam Phukan @ Petai -Vs- State of Assam*** (Criminal Appeal (J) No. 91/2019), wherein at Para-46 it has been held as follows –

“46. As has been held by the Supreme Court, the test to be applied to see as to whether the sudden provocation on the part of the deceased to the appellant, was grave or not, is whether a reasonable man would likely to lose self-control as a result of the sudden provocation. In the present case, the admonition and reprimand given by the deceased to the appellants, who were under the influence of liquor, not to create nuisance on the road and to go home, was sudden and unexpected. The appellants were not expecting such a sudden and unexpected admonition/reprimand. Besides, the appellants being apparently under the influence of liquor, they could not be said to be reasonable persons in the ordinary sense of the term, as there is a vast difference between an intoxicated person and a person who is not under the influence of liquor. Though a reasonable person may not lose self-control as a result of such provocation, it would not be unexpected for a person under the influence of liquor, to regard and react to the said provocation as a grave provocation.”

The appellant's counsel submits that the appellant being under intoxication, the appellant could not be said to be a reasonable person, who would be able to act and behave as an intoxication free reasonable person. He submits that there is always a difference in the behavior of a person who is intoxication free vis-a-vis a person who under the influence of alcohol. As such, while a reasonable person may not lose self-control easily when provoked, the same may not be true for a person under intoxication.

5. Learned counsel for the appellant further submits that the Supreme Court in the case of ***Vijay @ Vijaykumar -Vs- Stateof T.N.,*** reported in ***(2025) 3 SCC 671*** has laid the test to decide whether sudden provocation was grave or not, which is, if a reasonable man would likely lose self-control as a result of the said provocation. He submits that Para 22.2, 22.3 and 23 of the said judgment has clearly provided the objective test to be applied for deciding the said issue. Para 22.2, 22.3 and 23 of ***Vijay @ Vijaykumar (supra)*** is as follows:-

“22.2. The main difficulty lies in deciding whether a certain provocation was grave or not. A bare statement by the accused that he regarded the provocation as grave will not be accepted by the court. The court has to apply an objective test for deciding whether the provocation was grave or not. A good test for deciding whether a certain provocation was grave or not is this: “Is a reasonable man likely to lose self-control as a result of such provocation?” If the answer is in the affirmative, the provocation will be classed as grave. If the answer is in the negative, the provocation is not grave. In this context, the expression “reasonable man” means a normal or an average person. A reasonable man is not the ideal man or the perfect being. A normal man sometimes loses temper. There is, therefore no inconsistency in saying that, a reasonable man may lose self-control as a result of grave provocation. A reasonable or normal or average man is a legal fiction. The reasonable man will vary from society to society. A Judge should not impose his personal standards in this matter. By training, a Judge is a patient man. But the reasonable man or the normal man need not have the same standard of behaviour as the Judge himself. The reasonable man under consideration is a

member of the society, in which the accused was living. So, education and social conditions of the accused are relevant factors. An ordinary exchange of abuse is a matter of common occurrence. A reasonable man does not lose self-control merely on account of an ordinary exchange of abuses. So, courts do not treat an ordinary exchange of abuses as a basis for grave provocation. On the other hand, in most societies, adultery is looked upon as a very serious matter. So, courts are prepared to treat adultery as a basis for grave provocation.

22.3. *The question of loss of self-control comes up indirectly in deciding whether a particular provocation was grave or not. So, if it is proved that the accused did receive grave and sudden provocation, the court is generally prepared to assume that homicide was committed while the accused was deprived of the power of self-control. In some cases, it may be possible for the prosecution to prove that the accused committed the murder with a cool head in spite of grave provocation. But such cases will be rare. So, when the accused has established grave and sudden provocation, the court will generally hold that he has discharged the burden that lay upon him under Exception 1 to Section 300IPC.*

23. *What should be the approach of the court? The provocation must be such as will upset not merely a hasty and hot-tempered or hypersensitive person, but one of ordinary sense and calmness. The court has to consider whether a reasonable person placed in the same position as accused would have behaved in the manner in which the accused behaved on receiving the same provocation. If it appears that the action of the accused was out of all proportion to the gravity or magnitude of the provocation offered, the case will not fall under the exception. The case can only fall under the exception when the court is able to hold that provided the alleged provocation is given, every normal person would behave or act in the same way as the accused in the circumstances in which the accused was placed, acted."*

6. The learned counsel for the appellant submits that in the present case, PW-7 had admonished the appellant for allegedly abusing his mother as she had given him only Rs. 30/-, which led to blows being traded between the appellant and PW-7, wherein the deceased mother had thereafter given two slaps to the appellant. The provocation and the fight between PW-7 and the deceased was grave, for which Exception-4 to Section 300 would be attracted. He thus submits

that the impugned judgment should be set aside and the appellant should either be acquitted of the charge under Section 302 IPC or in the worst case scenario, should be convicted under Section 304 Part-II IPC.

7. Ms. A Begum, learned APP, Assam on the other hand, submits that PW-5 is the eye witness to his son, the appellant, killing his mother with a *Bothi Dao* which nearly severed the neck of the deceased. She submits that when there is an eye witness to the crime in question, the stand of the appellant that he had not committed the crime is patently false. Further, in the case of ***Veer Singh & Others -Vs- State of Uttar Pradesh***, reported in ***(2014) 2 SCC 455***, the Supreme Court has held that it is not the number of witnesses, but the quality of the evidence of the witnesses which is important and there is no requirement under the law of evidence that any particular number of witness is to be examined to prove or disprove a fact. The evidence must be weighed and not counted. Further, as a general rule, a Court can act on the testimony of a single witness provided it is wholly reliable. In the present case, when there is a eye-witness to the killing of the deceased by her son, i.e., the evidence of the eye witness father and read with the evidence of the maternal uncle of the appellant (PW-7), the conviction of the appellant under Section 302 IPC suffers from no infirmity.

8. Learned APP, Assam further submits that Exception-4 to Section 300 IPC is not attracted to the facts of the present case, inasmuch as, the provocation had been initiated on the part of the appellant and not by the deceased or by the maternal uncle (PW-7). Further, the alleged retaliation by the appellant, nearly severing the neck of the deceased in response to the deceased mother slapping the appellant twice, when the appellant and the maternal uncle were fighting, does not attract Exception-4 to Section 300 IPC. She accordingly submits that

the impugned judgment of the learned Trial Court should not be interfered with.

9. We have heard the learned counsels for the parties and also perused the materials available on record.

10. The brief facts of the case is that on the fateful day, i.e., 16.03.2016, the appellant had taken money from his mother (deceased) and had gone out from the house. He later came back after consuming liquor and demanded money from the deceased (mother). The appellant was given 30 rupees by the deceased. As the appellant was not satisfied with the amount of money given to him, he started abusing his mother (deceased).

11. The brother of the deceased, who was also in the house at the relevant point of time, objected to the appellant abusing his sister, the deceased. A quarrel ensued between the appellant and PW-7, which apparently ended with the appellant and PW-7 assaulting each other. The assault by the appellant on PW-7 was objected by the deceased, which led to the deceased slapping the appellant twice. Thereafter, PW-7 left the residence of the deceased. However, the appellant picked up a *Bothi Dao* (a sharp weapon) and hacked the neck of the deceased, due to which the neck of the deceased was nearly severed.

12. The eye witness who saw the appellant hacking the neck of his mother with the *Bothi Dao* is PW-5, is the father of the appellant. PW-5 in his evidence stated that the appellant (son) demanded money from his mother. His wife then gave Rs.30 to the appellant. However being not satisfied, the appellant started abusing his mother. PW-7, who was also present, objected to the appellant abusing the deceased. A quarrel ensued, due to which the appellant tried to assault PW-7. As the deceased objected to the appellant trying to assault PW-7, PW-7 left the place. However, the appellant picked up a *Bothi Dao* and struck

the neck of his mother. The appellant then fled with the *Bothi Dao* in his hand.

13. The evidence of PW-7 is to the effect that the appellant took the money from his sister and went out. He came back again after consuming liquor and demanded money from his sister. A quarrel ensued, due to which the appellant started abusing the sister of PW-7. PW-7 thereafter scolded the appellant and told him not to abuse his mother. The appellant became enraged and pushed PW-7 to a nearby bed and pressed his neck. PW-7's sister thereafter rushed at the appellant and slapped him twice. The appellant then went inside a room. PW-5 and the deceased followed the appellant, while PW-7 came out of the house. The appellant then came out with a *Bothi Dao* in his hands, while PW-7 was working with a dao in the garden. On coming out, the appellant took the dao from PW-7 and left. PW-7 then entered the house and saw his sister lying dead with a cut injury on her neck. Though PW-5 told PW-7 to take his sister to the hospital, he saw that she had died. The police were thereafter informed. The police thereafter saw the appellant standing on the road with the *Bothi Dao* and the dao which he had taken from PW-7.

14. The evidence given by the Doctor (PW-2) is to the effect that he examined the deceased on 13.03.2016 and found the following:-

"There was a chop wound of size 12cm x 7cm x spinal cord deep present on right postero lateral aspect of neck, transversely, the anterior end being 5 cm lateral to the midline and 6cm above the clavicle. Skin, muscles, vessels, nerves, spinous process of 6th cervical vertebrae, body of 7th cervical vertebrae and spinal cord inside the 7th cervical vertebrae all were cut at this level. The wound was deeper at posterior aspect. Margins were sharp, contused at places and blood clots were adherent to the margins which resist washing."

On Internal examination-

On opening the body cavities, skull and scalp were healthy. Vertebrae is already described. Membranes of brain were pale. Brain was pale, Spinal cord is already described. Thoracic walls were healthy. Pleurae, right lung, left lung, larynx and trachea and pericardium were pale. Heart was healthy and chambers were empty. Vessels were healthy.

On abdomen- wall was healthy, peritoneum, esophagial mucosa, stomach mucosa and small intestine mucosa were pale. Stomach cavity contained semi solid food particles. Small intestine contained semi digested food particles. Large intestine contained gases and fecal matter. Liver, kidneys and bladder were pale. Bladder contained normal colour urine.

External and internal organs of generation were healthy.

Opinion-

Death was instantaneous following injury sustained over the spinal cord as described. Injury was ante mortem caused by sharp edged heavy weapon and was homicidal in nature. Approx. time since death was 2-8 hrs.

The injuries described in the PM report are sufficient to cause death in the ordinary course of nature. Ext. 1 is my report and Ext. 1(1) is my signature."

15. In his examination under Section 313 Cr.P.C, the appellant has denied the evidence recorded by the learned Trial Court, with regard to PW-7 scolding him and the deceased slapping the appellant, besides the evidence of the appellant coming out from the house with a *Bothi Dao* and taking a dao from PW-7. Further, he has taken the stand that PW-7 was the culprit and not the appellant, as he has stated in his explanation to question No.15 as follows:-

"Q. No.15. What do you have to say regarding this case against you?

Ans: When the occurrence took place, my father was not there. My maternal uncle was also armed with dao. My mother suddenly entered in between us and she received the injury, on being caused by my maternal uncle. I was innocent. I told police about the real incident but nobody believed me."

16. The explanation by the appellant to the evidence adduced against him that he had killed his mother, is to the effect that at the time of occurrence, his father (PW-5) was not present and that his maternal uncle (PW-7) had killed his mother. The said explanation given by the appellant is not supported by any corroborating evidence and neither has the appellant made himself a witness, to prove that it was PW-7 who had killed the deceased and not the appellant. Further, the same is not in consonance with evidence of his eye witness father, who saw the appellant striking the deceased.

17. On considering the fact that the appellant has taken a stand that he was intoxicated and could not be said to be a reasonable person at the time of the incident, we do not have any reason to believe the explanation given by the appellant that he was not the perpetrator of the crime, on the basis of the explanation given by him under Section 313 Cr.P.C to question No.15. In fact, the answers given by the appellant to question Nos.2, 4 & 5 implies that the appellant had killed his mother. The question Nos.2, 4 & 5 and the answers given to the same by the appellant, in his examination under Section 313 Cr.P.C., are as follows:-

“Q.No.2. PW1 Sri. Khagen Ch. Deka testified that deceased Gita Nandi used to reside in front of his Railway quarter at Gosala. He also added that in the year 2016, one morning he heard some hullah in the house of the deceased and after going there he saw a lady in a pool of blood inside the room and came to hear that you had killed her? What is your reply?

Ans: May be true.

Q.No.4. PW3 Tonmoy Chatterjee testified that he knows the informant Subhendra Narayan Nandi and the deceased Gita Rani Nandi, died in 2016. He also testified that he used to reside at the adjacent quarter of informant and on the relevant day, he was in his shop at Maligaon Chariali. He deposed that after he heard, that the incident had taken place near his quarter, he rushed there

and saw that there was a large gathering in front of the quarter of Subhendra Narayan Nandi. Police was also there. He further added that on going inside the quarter, he saw that Gita Rani Nandi was lying on the floor in a pool of blood. Her neck was almost severed and heard that you had committed the murder. What is your reply?

Ans: May be true.

Q.No.5. *PW4 Santana Dey (Bhattacharjee) testified that Subhendra Narayan Nandi was her maternal uncle and deceased Gita Rani Nandi was her maternal aunt. She stated that you are her cousin. She testified that in 2016, after getting the information of her death, she rushed to the residence of Subhendra Narayan Nandi and saw the dead body of Gita Rani Nandi in a pool of blood on the floor of the house. She further deposed that there was cut injury at her neck and later on, she came to know that you had committed the murder. What is your reply?*

Ans: True."

18. There is nothing in the evidence to show that the father of the appellant had any reason to fabricate a story, to the effect that the appellant had killed his mother. In fact, we find the testimony of the father (PW-5) to be trustworthy and it inspires the confidence of the Court. This is not only due to the fact that no reason has been given by the appellant as to why PW-5 should tell a lie, but also due to the fact that the testimony of PW-5 is corroborated by the testimony of PW-7. PW-5 being a reliable eyewitness to the crime in question, we do not accept the attempt made by the appellant, to pin the death of the deceased at the hands of PW-7, especially when the evidence of PW-8, who is a Policeman, In-charge of the Gosala Police Outpost, had stated that while he was on his way to the place of occurrence, he saw the appellant with the *Bothi Daoin* his hands, as the appellant was going to the Gosala Police Outpost to surrender. PW-8 had further stated that he not only seized the *Bothi Daof* from the possession of the

deceased, but also seized another dao produced by the inmates of the house of the deceased.

19. We are, thus, of the view that it was only the appellant who had killed his mother with the *Bothi Dao* and nobody else. The above being said, the only other issue that has to be looked into, is as to whether the appellant was correctly convicted under Section 302 IPC and whether the case could have attracted Exception 4 to Section 300 IPC. If Exception 4 to Section 300 IPC is attracted, we would have to see whether the conviction of the appellant would have to be done under Section 304 Part-I or Part-II IPC.

20. In the case of ***Ajmal vs. State of Kerala***, reported in **(2022) 9 SCC 766**, the Supreme Court referred to the judgment in the ***Pulicherla Nagaraju vs. State of A.P***, reported in **(2006) 11 SCC 444**, wherein it was held that to decide whether a case falls under Section 302 IPC or 304 Part-I or 304 Part-II, the intention has to be seen and the intention to cause death has to be gathered from a combination of a few or several more circumstances, which are not exhaustive but which include (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurred by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;

(xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.

21. In the case of ***Gurmail Singh and Another vs. State of UP and Another***, reported in **(2022) 10 SCC 684**, the Supreme Court has held that in order to make culpable homicide as murder, the act by which death is caused should fall not only under anyone or more of the Clauses firstly to fourthly under Section 300 IPC, but they should also not fall under any of the 5 Exceptions to Section 300 IPC.

22. In the case of ***Nipam Phukan (supra)***, this Court was dealing with an appeal arising out of a conviction of the appellant therein under Section 302/34 IPC, for having slapped a person who had provoked the intoxicated accused/appellant standing on the street. The provocation had been made by the deceased who had come out from his house and admonished the intoxicated accused/appellant. It was in that context that this Court had held that the accused/appellant, who was under intoxication and took offence to the admonishment, could not be said to be a reasonable person, vis-a-vis a reasonable person free of intoxication. This was due to the fact that there was a difference between an intoxicated person and a person not under the influence of liquor. The reaction to a provocation by a person under intoxication and by a person who is not under intoxication would be different, inasmuch as, a person under the influence of liquor was likely to lose his power of self-control more easily than a person not under intoxication. It was in that context where this Court had held that the accused/appellant therein was subjected to a grave and sudden provocation by the deceased in a public place/street, besides being a

stranger to the accused/appellant. On the other hand, the appellant and the deceased herein are no strangers to each other. In fact, the appellant is the son of the deceased mother. The incident also occurred inside the house of the deceased. The provocation was also initiated by the appellant, when he started abusing his mother for giving him only Rs. 30/-. The fight had ensued between the appellant and PW-7 and not with the mother. Just because the mother apparently gave two slaps to the appellant, who was fighting his uncle (PW-7), does not lead us to believe that there was any provocation initiated by the deceased against the appellant, nor did the deceased fight the appellant. The factual situation in this case is different from the fact situation in ***Nipam Phukan (supra)*** and as such, we are of the view that the decision in ***Nipam Phukan (supra)*** is not applicable to this case. A decision is only an authority for what it decides. A little difference in facts changes the precedential value of a decision. Thus, in our opinion, Exception-I and IV to Section 300 IPC do not appear to be attracted to the facts of this case.

23. On considering the fact that the appellant had used a Bothi Dao on a vital part of the body of his mother (neck), which nearly severed the neck/head of the victim, goes to show that a huge amount of force had been deployed by the appellant. Though there may not have been any pre-meditation in the killing of the deceased by the appellant, the weapon used with great force on the neck of the deceased leads us to the conclusion that there was a sudden intention on the part of the appellant to kill the deceased.

24. Though the Supreme Court in the case of ***Vijay @ Vijaykumar (supra)*** has held that when an accused has generally established grave and sudden provocation, which would attract Exception-1 to Section 300 IPC, the provocation in this case has been made on the part of the appellant. Further, for

attracting Exception-4 to Section 300 IPC, the quarrel has to lead to a fight between the parties. In the present case, there being no fight between the appellant and his mother, we are of the view that Exception-4 to Section 300 is not attracted to the facts of this case.

25. In view of the reason stated above, we do not find any ground to interfere with the impugned judgment of the learned Trial Court.

26. The appeal is accordingly dismissed.

27. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant