
(2004) 05 GAU CK 0006
In the Gauhati High Court
Case No : Cril. Appeal No. 307 of 2002

Abdul Roshid and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 31-05-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 299, 300, 302, 325, 34

Citation : (2004) 3 GLT 312

Hon'ble Judges : P.G. Agarwal, J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : J.M. Choudhury, S.I. Rasul and N. Ahmed, for the Appellant; F.H. Laskar, Public Prosecutor, for the Respondent

Judgement

P.G. Agarwal, J.—Heard Mr. J.M. Choudhury, learned Senior Counsel for the accused-Appellants and Mr. F.H. Laskar, the learned P.P.

2. This appeal is directed against the judgment and Order, dated 8.7.2002, passed by the Adhoc Additional Sessions Judge, Fast Track Court, Sonitpur, Tezpur in Sessions Case No. 14(S) 2000 (G.R. Case No. 1207/97), convicting the accused-Appellants u/s 302 / 34 IPC and sentencing them to imprisonment for life and to pay a fine of Rs. 1000/- each, in default further imprisonment for six months.

3. The prosecution story of the case in brief is that on the date of occurrence at around 12 noon, while the deceased was on the road, the accused-Appellants assaulted him with iron rod and lathi causing injury on the knee and back and as a result of which the deceased Abdul Kadir died while he was being taken to Hospital. In this case, there are three eye witnesses to the occurrence. P.Ws. 1, 2 and 3 have all deposed about the incident of assault and we find that the trial Court for the reasons mentioned in the impugned judgment relied on their testimony holding that the accused-Appellants in furtherance of their common intention assaulted the deceased.

4. Dr. Apurba Krishna Sarmah (P.W. 7) held the autopsy over the dead body and found the following injuries on the person of the deceased:

1. A lacerated cut injury on the anterior aspect of the right hand.

Size- 3 cm x 5 cm.

2. A cut injury on the right knee joint.

Size- 3 cm x 0.25 cm.

3. A lacerated cut injury on the back

Size- 4 cm x 0.5 cm.

5. In the opinion of the doctor, the deceased died due to shock and haemorrhage as a result of the injuries sustained by him. The medical evidence in this case is relevant as we find that the deceased did sustain the injury on non vital organs of the body and the doctor was very specific when he stated that "Injuries No. 1 to 3 are not at the vital part of the body and itself are not sufficient to cause death of a person in ordinary course". The doctor however, stated that there was fracture on the legs and forearm and the death was due to loss of blood and that loss of blood could have been averted by giving medical treatment. The witness was very categorical that these injuries in ordinary course of nature can not cause death.

6. On consideration of the entire medical evidence on record, we hold that these are grievous hurt punishable u/s 325 IPC. It is also stated that all the above injuries inflicted on the person of the deceased by the accused persons were minor injuries. Considering the nature, site and size of injuries which was 0.5 cm or 0.25 cm, it can be inferred that this is not a case of homicidal death and we find that the learned trial Court has not given any reason as to how the above act of the accused persons constitutes an offence punishable u/s 299 or 300 IPC.

7. The question whether the accused persons will be liable for their act or whether all the accused persons can be roped with the help of Section 34 IPC, we find that the learned trial Court has recorded the finding that all the accused persons acted in furtherance of their common intention and there is evidence in support of the said finding that all the accused persons gheraoed the deceased and thereafter assaulted him. We hold that the act of the accused persons is punishable u/s 325 / 34 IPC.

8. In the result, the conviction and sentence of the accused Appellants u/s 302 / 34 IPC are set aside and the accused-Appellants are convicted u/s 325 / 34 IPC. It is submitted that the accused Appellants were in custody at the time of investigation and thereafter they were in custody since July, 2002, i.e. from the date of judgment. We, therefore, sentence the accused-Appellants to the period of imprisonment already undergone by them and they are set at liberty forthwith and they shall be released from the jail custody, if not wanted, in connection with any other case. The appeal stands disposed of accordingly.