
(2019) 08 GAU CK 0032
In the Gauhati High Court
Case No : Criminal Appeal No. 232 Of 2015

Abul Hussain And 2 Ors

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 14-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120(B), 302, 342, 382
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 08 GAU CK 0032

Hon'ble Judges : Manash Ranjan Pathak, J; Rumi Kumari Phukan, J

Bench : Division Bench

Advocate : S K Deori

Final Decision : Allowed

Judgement

R. K. Phukan, J

1. Heard Mr. S. K. Deori, learned counsel for the accused appellants and Mr. Makhan Phukan, learned Additional Public Prosecutor, Assam, for the State.

2. The appeal is preferred against the judgment and order dated 26.08.2015 passed by the learned Sessions Judge, Nagaon in Sessions (T-1) Case No. 320(N)/2011 under Sections 302/34 of the IPC, wherein the three appellants have been convicted and sentenced to undergo rigorous imprisonment for life with fine of Rs. 10,000/-, in default, to undergo simple imprisonment for a period of 1 (one) year.

3. The prosecution case in brief is that the informant, Jahed Ali, who is the father of the deceased, lodged an FIR on 07.06.2009 before the Officer-in-Charge of Batadraba Police Station, stating that his son Abdul Rahman, on a telephonic call from his wife Hasina Khatun, went to his in-laws house on 05.06.2009, but on the next day, i.e., on 06.06.2009, it was informed that his son had been admitted in the hospital, wherein he was found dead. In the FIR it was stated that his son Abdul Rahman married Hasina Khatun about 7 (seven) years back

and out of their wedlock, two children were born to them and that few days prior to the incident, his wife Hasina Khatun left for her paternal house, wherefrom, she called him, informing that their son fell ill and therefore, said Abdul Rahman went to the house of his in-laws, but on the next day, his dead body was found in the hospital.

4. Suspecting involvement of the family members of Abdul Rahman's in-laws and his wife, the FIR was filed and accordingly, Batadraba P.S. Case No. 51/2009 was registered under Sections 342/120(B)/302 of the IPC. The dead body of the deceased Abdul Rahman was sent for post-mortem examination and numbers of witnesses were examined during the investigation.

5. At the conclusion of the investigation, charge sheet was laid in said Batadraba P.S. Case No. 51/2009, corresponding to GR No. 1433/2009 against the accused persons under Sections 382/120(B)/302/34 of the IPC. The said case being Sessions' triable, was committed to the Court of Sessions Judge, Nagaon, wherein it was registered as Sessions (T-1) Case No. 320(N)/2011. Learned Sessions Judge framed charge under Sections 302/34 of the IPC against all the accused persons, which were read over and explained to them, to which they pleaded not guilty and claimed to be tried. In support of their case, the prosecution examined 14 (fourteen) witnesses, including two Medical Officers and the Investigating Officer of the case. On conclusion of the Trial, the learned Trial Court found all the accused appellants guilty and sentenced them as aforesaid. Hence, this appeal by the appellants.

6. We have heard the submission of learned counsel Mr. Deuri for the accused appellants, who had argued on the basis of the evidence on record that except some doubt raised by the informant (father of the deceased), there is no evidence against the accused persons to prove the aforesaid charge. The relevant portion of the evidence on record has been pressed into and attention has been drawn to all other relevant evidences on record including the evidence of the Medical Officers.

7. We have also considered the submission of the learned Additional Public Prosecutor Mr. Phukan, who has firmly submitted that the accused persons have been convicted on the basis of circumstantial evidence, which proved informant's suspicion upon the accused persons regarding the death of his son in an unnatural circumstance.

8. Pursuant to the submissions made before this Court, we have gone through the entire evidence on record including the evidence of the Medical Officers, more particularly, the evidence of deceased's brother, PW.4 and his parents, PW.3 and PW.7, who alleged about the involvement of the accused appellants. In the entire prosecution case, except the evidence of above 3 (three) relative of deceased, all other are hearsay witnesses. So let us briefly discuss about the evidences of the PWs 3, 4 and 7 accordingly.

9. In his evidence, PW.3/informant, Md. Jahed Ali has stated that his son Abdul

Rahman went to his father-in-laws house on the previous day of the incident and, later on, he was informed that his son died. He went to the hospital and saw the dead body of his son. Although, he did not know who has killed his son, but he suspected that his son has been killed by the family members of his in-laws. Hence, he filed the FIR.

10. PW.7, Mst. Nur Banu is the wife of PW.3 and mother of the deceased. In her evidence, she has given the same statement as PW.7 that her son Abdul Rahman went to his in-laws house on the previous day and from there, he informed one Malek over telephone that his daughter was severely suffering from diarrhoea, but on the following day, she came to know about the death of her said son. It is further stated that she did not know as to how he died and contended that she has no any grievance against the accused persons.

11. PW.4, Md. Abdul Barek (brother of deceased) in the same way, stated that he did not know as to how his brother died and he went to the hospital on getting information.

12. Thus, their evidence reflects that they found their son/brother dead in the hospital, after he went to the house of his in-laws for which, the informant filed the FIR against the accused persons, suspecting their involvement in it.

13. The other witnesses, i.e. PW.5, PW.6, PW.8 and PW.9, are all hearsay witnesses. They simply stated that on hearing the death of their co-villager Abdul Rahman in the hospital, they went to the hospital to see his dead body and they did not state anything as to how the deceased was killed. PW.9 also stated that he found the wife of the deceased in the hospital. The other three witnesses, PW.10, PW.11 and PW.12, gave similar statements that they did not know about the incident and that they also did not know as to how the deceased died.

14. Now, let us discuss the evidence of the Medical Officers. The deceased was first examined by PW.14, Dr. P.K. Sarma, who conducted the post-mortem examination on the person of the deceased on 06.06.2019 and he did not find any injury on the body of the deceased and stated that the cause of death of the deceased cannot be ascertained. Hence, vide Exhibit-8, his visceras containing liver and its section, kidney and its section and stomach was preserved as of Viscera. Said visceras of the deceased were sent for FSL examination. Viscera was examined by PW.1, who is a Junior Scientific Officer in the FSL, Guwahati and on such examinations of organs like a portion of liver, one kidney and stomach, he gave the finding that it gave positive test for organo chlorine insecticide vide Exhibits - 1 and 2 his reports.

15. There are two other witnesses, i.e. PW.2 and PW.13. PW.2, Nalini Bordoloi, was posted as an A.S.I. and was attached to the Dhing Police Station. On that day, he was entrusted with the investigation of the U.D. Case No. 08/2009 and on instruction of the concerned Officer-in-Charge, he visited the Dhing Hospital and sent the dead body of the deceased to the Nagaon Civil Hospital for post mortem examination. He collected the post mortem report and sent the visceras

of the said deceased for its FSL examination. After collecting all necessary documents he submitted charge sheet.

16. On the basis of the aforesaid evidence, the learned Trial Court was of the view that the deceased was called to the house of his in-laws by the accused persons and on the very next date, he was found dead in the hospital. Coupled with the facts that some insecticide was found in the stomach of the deceased, it was held that there is strong circumstantial evidence against the accused persons and held him guilty of the offence.

17. We have noted that except the suspicion raised by the informant of the case PW.3, i.e., father of the deceased, there is no any positive evidence to support the charge. We have also observed that the son of the informant married said Hasina Khatun seven years prior to the incident and they had two children out of their wedlock and, at the time of the incident, she was in her parental house. On perusing the records, we did not find any evidence that the relation between the deceased and his wife was bitter, for which, she had left her matrimonial home and due to such reason, tactfully she called her husband to her house with some oblique motive. That being so, there is a question as to why the in-laws and other family members intended to kill the deceased by calling him to their house. But, there is no answer to that question.

18. On the other hand, the deceased was found normal in the morning on the next day, while he was in the house of the accused persons and in day time he suddenly fell ill and the accused persons took him to the hospital so as to provide him medical treatment. The witnesses have referred that in the hospital they found the wife of the deceased with him. The accused thereafter carried the deceased to the hospital for treatment and this aspect of the matter indicates that if they had intention to kill the deceased, they would not take him to the hospital to provide treatment.

19. As has been discussed above, none of the witnesses have implicated any of the accused persons with the offence charged and the witnesses have no knowledge as to how the deceased died. That being so, it can be simply concluded that the evidence adduced by the prosecution itself is not sufficient to implicate the accused persons with the offence alleged.

20. Lastly, as regard the evidence of the Medical Officer, it is to be noted that at the time of the post-mortem examination of the deceased, no injuries were found on the body and he was found to be healthy at the time of post-mortem examination. On FSL examination of the viscera of the deceased, as stated above, insecticide was found therein. That finding alone cannot be enough to hold guilty of the accused persons under Section 302 of the IPC.

21. From the above, we are of the view that there is lack of evidence on the part of the prosecution itself to sustain the conviction of the accused appellants under Section 302 of the IPC. The reliance placed by the learned Trial Court on the circumstantial evidence is not at all sufficient inasmuch as, there is no conclusive

circumstance to conclude the hypothesis of the guilt of the accused.

22. The decisions relied by the learned Trial Court in the case of Benu Namasudra -Vs-State of Tripura, reported in 2009 (4) GLT 963 and in the case of Satyendra Das and Ors -Vs-State of Assam, reported in 2009 (3) GLT 525 are not applicable in the present case as common intention, facts and circumstances is absent in the present case where, there was no injury on the body of the deceased nor there is any other similar circumstances to attribute the culpability of the accused persons.

23. Learned counsel for the appellants has placed reliance upon the decision in the case of Gurnam Sing -Vs- State of Assam, reported in 1996 (I) GLT 476, wherein it has been held that any circumstantial evidence in order to sustain the conviction must satisfy three conditions:- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established, (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused, (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

24. It has been contended that in the present case, there is no chain of evidence to point out the guilt of the accused persons and the learned Trial Court has wrongly placed reliance upon the circumstantial evidence whereas the chain of facts is not complete.

25. It is also noted that the learned Trial Court placed reliance upon the statement given by the accused persons under Section 313 Cr.P.C. that they failed to reply properly. The statements made by the accused persons under Section 313 Cr.P.C. cannot be relied to prove their guilt and there has to be positive evidence on record to prove the charge.

26. On due consideration, we are of the opinion that the prosecution failed to prove the charge against the accused persons under Sections 302/34 of the IPC beyond all reasonable doubt.

27. Resultantly, we set aside the impugned judgment and order dated 26.08.2015 passed by the learned Sessions Judge, Nagaon in Sessions (T-1) Case No. 320(N)/2011 convicting the accused appellants under Sections 302/34 of the IPC and the appellants are acquitted from the charge.

28. It is placed before the Court that all the accused persons are already on bail. Accordingly, bail bonds stands discharged.

29. Consequently, the appeal is allowed. No order as to the cost.

30. Return the LCR, along with a copy of this judgment.