

(2013) 08 GAU CK 0078
In the Gauhati High Court

Case No : Criminal Appeal No. 32 (J) of 2010 and Criminal Appeal No. 127/10

Alimuddin Barbhuiyan Safiruddin Barbhuiyan

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357A, 428
Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2013) 08 GAU CK 0078

Hon'ble Judges : Indira Shah, J; B.D. Agarwal, J

Bench : Division Bench

Advocate : S. Roy, Amicus Curiae and Mr. A.R. Sikdar, for the Appellant; B. Bhuyan, Addl. PP, Assam, for the Respondent

Judgement

B.D. Agarwal, J.—Both the appeals are being disposed of by this common judgment since the appeals have been filed by the same convict and against the same judgment. The Criminal Appeal No. 32 (J) of 2010 has been filed from the jail and Criminal Appeal No. 127 of 2010 was subsequently filed by the convict, engaging his personal counsel.

2. We have heard Mrs. S. Roy, learned Amicus Curia and Mr. AR Sikdar, learned counsel for the appellant and Ms. B. Bhuyan, learned Addl. PP. Assam. We have also gone through the impugned judgment and evidence on record.

3. The appeals are directed against the judgment dated 11.2.2010 passed by the learned Sessions Judge, Cachar, Silchar in Sessions Case No. 16 of 2007. By the impugned judgment the appellant has been convicted u/s 302 of the Indian Penal Code and he has been sentenced to undergo imprisonment for life and also to pay fine of Rs. 5,000/- with default stipulation of further Rigorous Imprisonment for two months.

4. The gist of the prosecution case is that the accused/appellant is none else but the brother-in-law of the deceased woman. It also appears from the record that

the husband of the deceased and the appellant were living in the same compound in two different houses. On 16.10.2006 a minor daughter of the deceased plucked flowers from the compound of the accused. The aforesaid act of the minor child was not tolerated by the accused and he entered into an altercation with the deceased woman. Thereafter the deceased was going to report about the incident to the house of one Khalik Master. At that point of time, the accused came with an wooden bottom and dealt several blows on the face and head of the deceased and as a result the victim died on the spot.

5. The husband of the deceased learned about the incident from Khalik Master at about 10.00 am. Thereafter, he lodged the formal FIR on the same day naming the appellant as offender. Accordingly a case u/s 302 IPC was registered against the accused and after investigation, charge-sheet and trial the accused has been convicted for the offence of murder.

6. Out of the 8 (eight) witnesses PW 1 is the husband of the deceased and PW 6 is the daughter. PWs 2, 3, 4 and 5 are the immediate neighbours of the deceased, PW 7 is the autopsy doctor and PW 8 is the Investigating Officer.

7. PW 1 being one of the two daughters of the deceased was at home. She has deposed that her younger sister had plucked flowers from the house of the uncle, whose house was situated adjacently. After half an hour the accused came with his wife and reported about the plucking of the flowers and picked up a quarrel with her mother Saira Begum. PW 6 has further deposed that her mother was proceeding to the house of the Khalik Master to report about the incident. In the meanwhile, the accused came with a wooden bottom and followed her mother and when her mother reached the field in front of the house of the accused he assaulted her with the wooden bottom and as a result of the assault her mother fell on the ground. Thereafter, the accused threw the piece of wooden bottom in a pond. There is relevant suggestion to PW 6 to take a view that she has given a false testimony against her own uncle.

8. PW 5 is also the immediate neighbour of the deceased/accused. In the chief examination PW 5 has deposed that he saw when the accused was assaulting the deceased with a wooden bottom from his house. However, in the cross-examination PW 5 deviated from the testimony and deposed the he saw the accused going away from the place of occurrence. Besides this, PW 5 has deposed that after the incident the accused threw the wooden weapon in a pond, which was seized by the police. PW 5 had also identified the weapon, produced in the court as material Exbt. 1. In this way PW 5 is corroborating PW 6 regarding throwing of the weapon in the pond and also noticing the accused leaving the place of occurrence.

9. As noted earlier PW 1 heard about the incident after some time and her testimony appears to be hearsay one. However, PWs 2 and 3 have deposed that hearing hulla they went to the place of occurrence and the found the accused leaving the place of occurrence.

10. In view of the aforesaid testimony of witnesses we hold that the prosecution could have thoroughly corroborated PW 6 and other witnesses about the complicity of the appellant.

11. Now the question is whether the offence would amount to murder or culpable homicide not amounting to murder. In this way, we have to look at the medical evidence and other statements as well. During the post-mortem examination the doctor found the following injuries.

(1) Multiple abrasion present over the face, Size from 5 x 4 cms. To 2 x 1 cm. Both jaws and teeth are missing. Fracture present from maxillary bones of both sides and mandible bones.

(2) Contusion present over whole region of scalp. One abrasion present on the right side of elbow, 5 x 3 cms. In the cranium there was subdural haemorrhage present. Brain found congested."

12. In the opinion of doctor the aforesaid injuries were ante-mortem and homicidal in nature, which were caused by a blunt weapon. In other words, the deceased was assaulted with a heavy object and this opinion is corroborating the prosecution story. Be that as it may, going by the fact that the entire face of the deceased was smashed by a heavy wooden bottom and also hitting the deceased on her head, causing instantaneous death, we hold that the accused had definite intention to cause such bodily injury, which was likely to cause death of the deceased. Hence, Clauses 2nd to Section. 300 IPC is attracted.

13. We have already summarized the prosecution story earlier. In this way, the deceased was assaulted because a quarrel had taken place due to plucking of flowers by a minor daughter of the deceased. In this way, the accused did not entertain any enmity with the victim and the incident took place on the heat of passion and without any premeditation. Besides this the daughter of the deceased has admitted that a quarrel had taken place in between the appellant and her mother. Hence, Exception 4 to Section 300 of the IPC is attracted.

14. In view of the aforesaid discussion of the evidence, we convert the conviction of the appellant from u/s 302 IPC to 304 Part-I of the IPC. Resultantly, the sentence is also reduced to 10 (ten) years imprisonment. However, the amount of fine and default sentence as awarded by the trial court are hereby maintained. Needless to mention that the period of sentence already undergone by the appellant during the period of investigation and trial shall be set off u/s 428 Cr.P.C.

15. With the aforesaid modification in the conviction and sentence both the appeals stand dismissed. The learned Sessions Judge is directed to issue modified custody warrant on receipt of a copy of this judgment.

16. The Government of Assam is directed to pay compensation amount of Rs. 1,00,000/-(Rupees one lac) only to the family members of the victim, as provided u/s 357-A of the Code of Criminal Procedure, 1973. The Government

shall deposit the compensation amount in the Office of the learned Sessions Judge, Cadhar, Silchar within a period of 2 (two) months from the date of receipt of a copy of this order. On receipt of the money the same shall be disbursed to the children of the deceased on proper identification and after obtaining proper receipt.

17. The Registry is directed to return the LCRs within a copy of this judgment. At the same time, the Registry shall forward a copy of this judgment to the Chief Secretary, Government of Assam for necessary action. We appreciate the valuable assistance given by Mrs. S. Roy, learned Amicus Curie for the appellant and she shall be entitled to one day's hearing fee.