

(2020) 01 GAU CK 0009
In the Gauhati High Court
Case No : Criminal Appeal No. 161 Of 2018

Amulya Das And Anr

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 20-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 148, 149, 302, 304, 323, 325
Code Of Criminal Procedure, 1973 — Section 313, 428

Citation : (2020) 01 GAU CK 0009

Hon'ble Judges : Suman Shyam, J; Hitesh Kumar Sarma, J

Bench : Division Bench

Advocate : A K Das, B Bhuyan

Final Decision : Partly Allowed

Judgement

Suman Shyam, J

1. The two appellants herein have been convicted under section 302 of the Indian Penal Code for causing death of Nirranjan Das and sentenced to undergo rigorous imprisonment for life with a further direction to pay fine of Rs.5000/- each with default clause. By the impugned judgment and order dated 27.03.2018, each of the appellants have also been convicted under section 323/34 of the IPC and sentenced to undergo simple imprisonment for six months .

2. The prosecution case, in brief, is that on 22.04.2013 at around 6.30 p.m. deceased Nirranjan Das went to bring back the cattle from the field. At that time, the accused persons had attacked him on a private road and hit him with a "lathi" on the head and neck resulting into his death. The accused had also struck the wife of the deceased, viz., Smti. Rajubala Das and his daughter Pinkala Das on their heads with bamboo sticks causing fractures on their heads. Having sustained grievous injuries, they had become unconscious. Later on, when the nephew of the informant Rahul Das had arrived at the place of

occurrence, the accused had rushed towards him to assault him. Rahul Das had entered the house of Sri Harmohan Das so as to save his life.

3. On 23.04.2013, Sri Mahadev Das i.e. son of the deceased had lodged an ejahar before the Mandira Police Outpost on the basis of which, Boko P.S. Case No.124/2013 was registered under Sections 147/148/149/325/302 IPC. Upon completion of investigation, the police had submitted charge-sheet against five persons viz. Sri Amulya Das, Sri Kamal Das, Sri Bhagawan Das, Smt. Mina Das and Smti. Thaneswari Das. Accordingly, formal charge was framed against the accused persons but since they pleaded innocence, the matter was sent up for trial.

4. The prosecution side had examined as many as 11(eleven) witnesses. Upon closure of evidence of the prosecution side, the statements of the accused persons were recorded under section 313 Cr.P.C. and they had claimed themselves to be innocent. However, the accused persons did not adduce any evidence.

5. Eventually, on the basis of the evidence available on record, the learned trial court had convicted both the appellants under section 302/323/34 of IPC. However, learned trial court was of the view that section 149 of IPC would have no application in this case. Opining that there was no evidence available on record to implicate the other three accused persons viz. Sri Bhagawan Das, Smt. Mina Das and Smti. Thaneswari Das, the learned trial court had acquitted them.

6. PW-1, Sri.Mahadev Das ,the son of the deceased, is the informant in this case. The PW-1 has deposed before the Court that on 23.04.2013 he had lodged an ejahar against the accused persons and that Ext-1 is the F.I.R. PW-1 has also identified his signature in the F.I.R. as Ext-1(1). According to the PW-1, the incident took place on 22.04.2013 at about 6.30 p.m. on the road near their plot of land. PW-1 is not an eye-witness to the occurrence but he has stated that having received the information about the incident over telephone he had immediately rushed to the place of occurrence and saw that his father and mother Rajubala Das were lying on the ground and his father appeared to be dead. He immediately informed the police over phone . His sister Pinkala Das was also there at the place of occurrence and she was also assaulted and was bleeding through her injuries on the head. PW-1 has deposed that he saw injuries on the neck and head of his father and also head injury on his mother. The witness has further deposed that he took his father and mother to Hekra Hospital. According to the PW-1 the co-accused Mina Das and Bhagawan Das had also assaulted his father.

7. There are three eye-witnesses in this case and they are PWs 4, 5 and 6. PW-4 Rahul Das has deposed that on the day of the incident his grandfather i.e. the deceased had gone to bring cows from another plot of land belonging to him located about 100 meters away from their residence. The said plot of land was near the place of occurrence.PW-4 has stated that upon going there, his

grandfather saw that the accused persons were putting up a fence on the plot of land and he requested them to refrain from doing so. There was a quarrel between them and he ran to his house and informed his mother Pinkala Das and grandmother Rajubala Das whereafter, both of them came back to the place of occurrence. According to PW-4, the accused persons had assaulted the deceased i.e. his grandfather, grandmother and his mother and had also tried to assault him but he ran away and took shelter in the house of one Harmohan Das. PW-4 has stated that the accused Kamal Das had assaulted his grandfather on the head with a lathi and accused Amulya Das had stabbed his grandfather on his neck.

PW-4 has also stated that his mother had sustained injuries on her head.

8. PW-5, Smti. Rajubala Das, is another eye-witness to the incident and she has stated that she was present at the place of occurrence and had seen that the accused persons had assaulted her husband and had thrown him on the ground and stabbed him on his neck. When she tried to restrain them, the accused persons had assaulted her with split bamboo sticks as a result of which, she had sustained injuries on her fingers. PW-5 has further stated that the accused persons had also assaulted her on her head with a split bamboo stick as a result of which she had sustained cut injuries on her head which required several stitches. According to this witness, her husband Niranjana Das had died on the spot as a result of the assault made by the accused persons.

9. PW-6, Pinkala Das, is the third eye-witness in this case. PW-6 has stated that she was present in the place of occurrence and has seen that her father was assaulted by the accused persons on his head and was thrown on the ground. PW-6 has stated that accused Amulya Das had assaulted her father on his neck with 'hulabari' and the other accused person assaulted him with a stick. The PW-6 has corroborated the version given by PWs-4 and 5 in their testimony as regard the nature of assault on the deceased. During their cross-examination, the testimony of PWs-4, 5 and 6, could not be dislodged by the defence side.

10. Post-mortem examination was conducted on the body of the deceased Niranjana Das on 24.04.2013. The post-mortem report Ext-3 mentions about the following injuries on the dead body.

"Wounds - position and character :

Injury

(1) Abrasion of size (7 x 1) cm present left side of chest on anterior aspect, 2cm above left nipple and 5 cm from midline.

(2) Abrasion of size (4 x 1)cm present left side of chest (anterior aspect) 1 cm above from injury No.1 and 5cm from midline.

(3) Abrasion of size (3 x 1)cm present 2cm above from injury No.2 and 5 cm from midline.

- (4) Scratch abrasion of size (7 x 2)cm present 4cm just below clavicle and 6 cm from midline on left side of shoulder joint.
- (5) Multiple abrasion of size (3 x 2), (3 x 1), (2 x 1)cm present left side of chest and whole face.
- (6) Multiple contusion of size (3 x 2), (4 x 1), (2 x 1) cm present over whole face.
- (7) Fracture mandible and maxilla on both side.
- (8) Laceration of size (2 x 1) cm x muscle deep on left ear.
- (9) Laceration of size (7 x 1)cm x muscle deep present left scalp on frontal region, 3 cm from midline and 5 cm above from left eyebrow.
- (10) Fracture sternum on midline.

NB : Blood smear adherent to wound margins & body at places - which resist washing with water."

11. PW-3, Dr. Manoj Kumar Baishya, was the doctor who had conducted the post-mortem examination on the dead body. PW-3 has opined that death was due to coma as a result of head injuries sustained as described. The doctor has further opined that all the injuries were ante-mortem and caused by moderately heavy blunt weapon and were homicidal in nature. During his cross-examination, PW-3 has stated that the injuries described in the post-mortem report cannot be caused by piercing object and that he did not find any stab injury on the dead body.

12. Ext-6 is the injury report of Rajubala Das. A perusal of the same goes to show that she had sustained head injuries inflicted by blunt weapon.

13. Likewise, Ext-8, i.e. the medical report of another injured witness, viz., Pinkala Das, goes to show that she had also sustained injuries such as laceration on the head scalp measuring about 5cm long which was caused by blunt weapon.

14. It is to be noted herein that PWs-5 and 6 herein are the injured eye-witnesses and in their deposition before the court, they have clearly stated that the deceased Niranjan Das was assaulted by the appellants with a lathi in his head and neck. The evidence adduced by the PWs 5 and 6 finds corroboration from the testimony of the other eye witness PW-4. The nature of injuries described in the post-mortem report Ext-3 matches with the eye-witness account.

15. Although there is some discrepancy as regards the use of expression "stabbing" in the sense that the PW-3 has stated that there was no "stab" injury on the dead body, yet, the same stands, in our opinion, explained from the testimony of PW-4 who has stated that his grandfather was stabbed on his neck by Amulya Das with a stick. Although the eye-witnesses have not mentioned about the use of any sharp weapon like a knife, yet, the eye witnesses have stated that the accused persons had pierced the neck of the deceased with split bamboo. PW-5 has also categorically stated that the accused had assaulted her

and her husband with split bamboo sticks wherefrom, she had sustained cut injuries on her head.

16. A split bamboo would have sharp edges and therefore, can be used as a weapon so as to cause piercing wound on human body. From a careful analysis of the testimony of the three eye-witnesses, we are of the view that the incident of "stabbing" referred to by the eye-witnesses relates to the injury caused by the accused on the neck of the deceased with the help of split bamboo sticks. Since the post-mortem report mentions about several injuries on the head and neck of the deceased caused by blunt weapon which were sufficient to cause homicidal death, the mere opinion of the PW-3 as regards absence of any stab injury, in our view, would not have any material bearing in this case.

17. As noticed above, the prosecution case is based on the eye-witnesses account and after careful scrutiny of the evidence on record we do not find any ground to disbelieve the testimony of the three eye-witnesses. Hence, we hold that the prosecution has been able to prove the charge brought against the appellants beyond all reasonable doubt.

18. Similarly, from the testimony of the injured witnesses PWs 5 and 6 and on perusal of their medical reports i.e. Exts 6 and 8, we are convinced that the two appellants have been rightly convicted under section 323/34 of the IPC and sentenced to undergo simple imprisonment of six months for causing grievous injury on PWs 5 and 6.

19. In the above context it would be pertinent to note here-in that although section 34 IPC was not initially added in the charge-sheet and the I/O had only added section 149 IPC against all the accused persons. Subsequently, upon examination of the evidence on record, the learned trial court has held that there was no evidence to sustain charge under section 149 of the IPC against the accused persons. The learned court below was of the view that there was also no evidence to sustain the charge brought against the co-accused Sri Bhagawan Das, Smt. Mina Das and Smti. Thaneswari Das since they could not be convicted solely on the testimony of PW-1 who was not present in the place of occurrence. However, the learned trial court had also observed that there was common intent and common object on the part of the accused Kamal Das and Amulya Das leading to the assault on the deceased person. Therefore, though charge was not framed under section 34 IPC, in view of the common intent on the part of both the accused to cause bodily injury and death to the deceased, Section 34 of IPC was applied in this case. Having regard to the bulk of evidence available on record, we find ourselves in agreement with the aforesaid view expressed by the learned trial court.

20. Having held as above, we have also noticed that the PW-4, who is one of the eye-witnesses in this case, has himself mentioned about a quarrel that took place between the deceased and the appellants regarding putting up of fencing over a plot of land. PW-4 has stated that his grandfather, after reaching the said

plot of land, saw that the accused persons were putting up a fence on that plot of land. Therefore, it is apparent that it is not the accused persons who had gone to the house of the deceased to pick up a quarrel but it is the deceased who had gone to the place of occurrence whereafter, the quarrel broke out.

21. PW-2, Aswini Baishya, who belongs to the same village, has also deposed that there was a dispute and fight with regard to the land in which Nirranjan Das had died. PW-1 who is the informant in this case and the son of the deceased had also stated that a few days prior to the incident when accused Kamal Das was raising fencing separating the two lands, his father had requested him not to give such fencing on his land but they did not listen to the said advice.

22. From the testimony of the aforesaid witnesses, it is clear that there was a land dispute between the parties and on the day of occurrence, the deceased person had reached the place of occurrence and in all probability objected to the fencing being raised by the appellants triggering off a quarrel between them. The assault made on the deceased was, therefore, evidently an outcome of the quarrel that had broken out between both the parties. Since the quarrel took place after the deceased had reached the place of occurrence and having regard to the evidence available on record, we find that there was no premeditation in this case. Moreover, use of blunt weapon like "lathi" also shows that there was no intention on the part of the accused persons to cause death to the deceased. Rather, it transpires that owing to the quarrel that had broken out between the parties, the assailants had attacked the deceased out of grave and sudden provocation having lost their sense of self-control.

22. For the reasons stated herein above, we hold that there was no intention on the part of the appellants to cause homicidal death to the deceased. We, therefore, set aside the conviction of the appellants under section 302 of the IPC and convict them under section 304 Part-II of the IPC for causing death to the deceased Nirranjan Das. Consequently, we sentence the appellants to undergo rigorous imprisonment for a period of 7 (seven) years each. The sentence of simple imprisonment for six months imposed under section 323 of IPC and the fine imposed upon both the appellants would, however, remains undisturbed.

The period of detention already undergone by the appellants shall be set off as per section 428 Cr.P.C.

The appeal stands partially allowed.

Send back the LCR.