
(2002) 01 GAU CK 0025

In the Gauhati High Court

Case No : Criminal Appeal Nos. 57 and 68 of 1999

Amzad Ali @ Amzad Khan

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Penal Code, 1860 — Section 149, 201, 300

Penal Code, 1860 (IPC) — Section 149, 201, 300

Citation : (2002) 1 GLT 598

Hon'ble Judges : D.Biswas, J and J.N.Sarma, J

Bench : Division Bench

Advocate : R.Sekhar, R.Majumdar, J.M.Choudhary, D.Talukdar , B.Banerjee, A.R.Sikdar, A.S.Choudhary, Advocates appearing for Parties

Judgement

D. Biswas, J.

1. By this judgment we propose to dispose of the Criminal Appeal No. 57 of 1999 and 68 of 1999^referred by the appellants against the judgment of conviction and sentence passed on 10.2.1999 by the learned Sessions Judge, Barpeta in Sessions Case No. 13 of 1994. On conclusion of trial, the learned Sessions Judge convicted all the appellants under Section 302 read with Section 149 IPC and sentenced each of them to imprisonment for life with fine of Rs.2000/, in default v of payment. Rigorous Imprisonment for another six months. In addition, the learned Sessions Judge also convicted all the appellants under Section 201 read with section 149 IPC and sentenced each of them to five year Rigorous Imprisonment along with fine of Rs.1000/, in default further Rigorous Imprisonment for three months.

2. Investigation was set in motion by the police when an F.I.R. was lodged by one Rupchan Mia on 3..8.1989 before the OfficerinCharge of Barpeta Police Station naming the appellants along with other responsible for causing death of three persons with daggers.

3. The F.I.R. discloses that at about 4 O'Clock on 3.8.1999, the deceased Tara Mia D1, Saket Ali D2 and Owaz Khan D3 were fishing in Dhaneshwari Beel of Keotpara Village when the accused persons armed with lathi, Fala and long (resembling spears) attacked and killed them because of previous enmity. They also assaulted Monowara Begum, Hussain Mia and others when they reached the place of occurrence to intervene. The accused persons also dragged the bodies of the three deceased persons and threw them into the Pahumara River.

4. On conclusion of investigation, the Police submitted charge sheet against 25 persons. On commitment the learned Sessions Judge framed charge against all of them under Sections 302/149 and 201 IPC.

5. During course of trial, the prosecution examined 11 witnesses to substantiate the charge. PW 1, PW 2, PW 8 and PW 9 are the eye witnesses. PW 5 and PW 6 are the Medical Officers who had conducted the Post Mortem Examination. On conclusion of trial, the learned Sessions Judge convicted and awarded the sentence mentioned above.

6. We have heard Mr. J.M. Choudhury, learned senior counsel for the appellants in Criminal Appeal No. 68 of 1999 and Mr. A.S. Choudhury, learned senior counsel for the appellants in Criminal Appeal No. 57/99. The learned counsel assailed the judgment on the ground that ocular version of the eye witness is not supported by medical evidence. According to them, there is no material to attract the provisions of Section 149 IPC and the evidence of the eye witnesses are not consistent enough to warrant conviction of the appellants.

7. The injuries found by PW 5 Dr. M.M. Das on the dead body of Owaz Khan D3 are as follows:

"External appearances:

The deceased was of average built. The body was swollen and decomposed. Rigormortis were absent. There was no faecal matter around the anus. There are multiple penetrating injuries all over the body.

External injuries:

(i) One penetrating injury over upper part of the sternum obliquely. Both ends of the injury were angular and edges were everted. Size 2"x1"x3".

(ii) Two penetrating injuries over chest wall 2?" left lateral from the lateral border of sternum and 1?" below the left nipple side by side.

(a) Size 1?" x ?" x 4". Edges everted. Both ends were angular. Blood clots were present around the wounds.

(b) Size 1" x ?" x 2". Edges everted. Both ends were angular.

(iii) Incised injury in front of the neck size 3" x 1" x ?". Edges everted. Adherent blood clots were present.

(iv) Two penetrating injuries on the left forearm.

(a) Size 1? x 1" x ?". Edges were everted and angular.

(b) Size ? x 1" x ?". Edges were everted and angular,

(v) penetrating injury in transversed manner over abdomen 2" above the umbilicus. Abdominal viscera were protruding out through it. Clotted blood found in and around it. Size ? x 1? x 4". Edges everted and both the ends were angular.

Cranium and spinal canal were healthy.

Thorax : The injuries were noticed which had already been described above.

Pleurae was found injured.

Larynx and trachea were healthy and blood clot was present.

Right lung was healthy. Left lung was injured below the external injury.

Haemothorax was present. Heart and Pericardium were injured. Both right and left ventricles were penetrated as a result of penetrating injury on the chest wall.

Abdomen : Peritonium was injured. Haemoperitonium was present. Mouth Pharynx and oesophagus healthy.

Stomach was also seen injured and the contents were spilled over the peritoneal cavity. Small intestine was found healthy and contains gas and little semisolid contents.

Large intestine was healthy and it contained gas faecal matter and it was pale.

Liver was healthy.

Spleen Healthy

Kidneys Healthy.

Bladder empty.

In my opinion the wounds were antemortem in nature. The death might have been caused due to shock and haemorrhage as a result of injuries sustained."

8. According to Dr. Das, the Injury No. ii was sufficient to cause death independent of other injuries as it had penetrated the heart. The doctor further opined that the assailants must have used sharp and double edged weapons as both the edges of the wounds were found angular.

9. PW 6, Dr. R. Pathak conducted Post Mortem examination on the dead body of Saket Ali D2 and found the following injuries:

"External appearance:

A male dead body of average built and height. The entire body was swollen with blackish discolouration. Eyes were closed with peeling of superficial skin. External Injuries :

(i) There were multiple penetrating injuries seen over face measuring "2" x 1" in size,

(ii) Multiple penetrating injuries were found over chest and abdomen destroying internal structures,

(iii) Anus was found lacerated and torn. Cranium and Spinal Canal were healthy.

Thorax:

Both side of the heart were found empty. Both the lungs were found pale. Peritoneal cavity was full of blood.

Penetrating injuries found on spleen of 1" inch depth.

The injuries were antemortem in nature. In my opinion the death was due to shock and haemorrhage as a result of injuries sustained."

10. PW 5 Dr. M. M. Das also examined Musstt. Monowara Khatun, wife of deceased Tara Mia D1 and found the following three injuries:

"(i) Penetrating fresh injury was seen on the lateral surface of the right arm 2" above the right elbow of size 2" x 2" x 2". Both edges were angular.

(ii) Bruise 1" x 1" in size on the lateral surface of the left arm 2" above the right elbow.

(iii) Bruise over the dorsum of the left palm 1" x 1".

During examination of the injured I had noticed mud on her wearing garments and on the right arm and forearm. The injured was examined at 12.05 A.M.; in the night.

In my opinion the penetrating injuries might have been caused by a sharp weapon."

11. It may be mentioned here that the dead body of Tara Mia D1 thrown into the river could not be recovered. The injuries of the two deceased persons clearly show that they have sustained multiple injuries both simple and grievous which caused their instant death. The number of injuries and the nature thereof clearly indicate that they were victims of assault launched by a number of persons. Situated thus, we would like to determine the individual complicity and culpability of the accused persons.

12. PW 1, Rupchan Mia lodged the ejahar with the brief description of the occurrence wherein he named 24 persons as the assailants of Tara Mia D1, Saket Ali D2 and Owaz Khan D3. During the course of evidence, he has stated that on his way back to home, near the bridge at Basna village, he found a gathering of

25/26 persons. He came to know that a marpit (act of assault) was going on. He went near the bridge and saw some people chasing Tara Mia D1, Owaz Khan D3 and Saket Ali D2 with lathi and spears. Tara Mia D1, Owaz Khan D3 and Saket Ali D2 were swimming in the river. The accused persons could reach near Saukat and Owaz and stabbed them with fishing instruments. Tara Mia D1, by that time, could manage to come to the bank and ran away. He took shelter in an abandoned house nearby. Some of the accused persons followed him. Accused Lal Mamud A3, Sorhab A2, Amzad A1, Fakamddin A8, Atab Ali A6, Omar A5, Hasen A9, Samud Ali A4 and Kumed Ali A10 brought out Tara Mia D1 after inflicting stab injuries. The accused persons also chased this witness. But he could manage to escape. He came straight to the police station to report the incident. He returned to the place of occurrence along with the police. They saw accused Amzad A1 carrying the dead body of Tara Mia D1 in a gunny bag. As soon as the torch was focused, Amzad A1 jumped into the river along with the dead body. PW 1 along with one Jabad Ali and one police personnel jumped into the river and caught hold of Amzad A1, but they could not recover the gunny bag. They also did not find the dead body of Saket Ali D2 and Owaz Khan D3 in and around the place of occurrence. Next day the dead body of Saket Ali D2 was recovered from Nakhandra river at a distance of three miles. The dead body of Owaz Khan D3 was recovered after two days from the same river at a distance of five miles. This witness further told that Amzad A1 who was apprehended by them was arrested by the Police at the place of occurrence.

13. The evidence of PW1 Rupchan Mia covers the prosecution version implicating appellants Lal Mamud A3, Sorhab A2, Amzad Ali A1, Fakaruddin A8, Atab Ali A6, Omar Ali A5, Hasen Ali A9, Samed Ali A4 and Kumed Ali A10 as the assailants of Tara Mia D1 by name. He also spoke of appellant Amzad Ali A1 who at the sight of the police jumped into the water throwing the gunny bag with the dead body of Tara Mia D1.

14. This witness, however, did not describe as to how they saw the dead body of Tara Mia D1 inside the gunny bag. The fact is that the dead body of Tara Mia D1 was not recovered. That Amzad A1 was apprehended from river water and was seen jumping with a gunny bag remains unassailed. On this context, let us examine as to what extent this witness has been corroborated by other eyewitnesses.

15. PW 2 Musstt. Monowara Begum is the wife of deceased Tara Mia D1. After being attracted by hue and cry, she went to the place of occurrence and found accused Nalu, Nidan A11, Sorab A2, Amzad A1, Jainuddin A14 and some others assaulting her husband with lathi, dagger, spear etc. She further stated that after assaulting her husband, the accused persons threw his body into the river. She named Nalu, Sorab A2, Nidan A11, Insan A12 and Jainuddin A14 as the persons who had dragged her husband to the river. The statement of this witness shows that she could identify the appellant Nidan Ali A11, Sorab Ali A2, Amzad Ali A1, Jainuddin A4 and Insan Ali A12 at the place of occurrence taking part in

assaulting her husband and throwing his dead body into the river. So, the statement of PW1 that he saw Amzad A1 carrying the dead body of Tara Mia D1 may be on presumption.

16. The evidence of PW 1 and 2 relates to two facets of the same occurrence, PW 1 spoke of assault on Saket Ali D2 and Owaz Khan D3 by some of the appellants while PW 2 spoke of assault on her husband by other appellants. The occurrence took place in an open field near the fishery in broad day light and the accused persons large in number were engaged in chasing and assaulting the victims in different directions. Therefore, the names of the accused persons cited by PW 1 and 2 not being common cannot be a ground for disbelieving their testimony.

17. PW 8 Javed Ali is the younger brother of deceased Saket Ali D2 and nephew of Tara Mia D1 and Owaz Khan D3. Hearing a commotion he went to the place of occurrence and saw accused Nalu Molla chasing his brother Saket Ali D2 with a sharp weapon and hitting him from behind. Nalu also chased this witness away from the place of occurrence. He also stated that his uncle PW 1 Rupchan Mia and PW 9 Lalchan Ali were chased away by the appellants. This witness, however, did not see the assailants of Tara Mia D1 and Owaz Khan D3. The evidence of this witness implicate accused Nalu Molla as the assailants of his brother Saket Ali D2. 18. PW 9 Lalchan Ali is the elder brother of deceased Tara Mia D1 and uncle of deceased Saket Ali D2. He has evinced that appellant Fakaruddin A8 came running from the direction of the river Pahumara and spoke of three accused persons including Hasen A9. Hasen A9 immediately left the place and came back with the accused persons being armed with lathi, spears and daggers and fishing instruments. Accused Samed A4 had carried a pointing, fishing instrument while accused Amzad A1 carried spear and dagger. Accused Latif had carried lathi. On being asked as to what had happened, the aforesaid three persons directed him to leave the place. This witness followed them and saw deceased Owaz Khan D3 coming from a different direction towards the shop followed by deceased Saket Ali D2 and Tara Mia D1. Accused Hasen A9 and Fakaruddin A8 started assaulting. Owaz Khan D3 with a lathi, Saket D2 and Tara Mia D1 apprehending danger ran towards Dhaneswari Beel. This witness was chased away to a nearby Chowk where he found Javed Ali. From there the place of occurrence was visible and he heard a loud cry of deceased Saket D2 and they saw few persons stabbing him. He immediately came to Barpeta Police Station along with Javed Ali and informed the police about the occurrence. The police visited the place of occurrence after about an hour along with him and apprehended appellant Amzad Khan A1 when he was trying to cross the river. He named other persons as the assailants of the deceased persons. From this witness we specifically find that three appellants, namely, Samed Ali A4, Fakaruddin A8 and Hasen Ali A9 have been identified as the assailants of Owaz Khan D3 and Saket Ali D2.

19. Admittedly three persons were killed in the occurrence. Tara Mia D1 was killed by one group of persons while Owaz Khan D3 and Saket were killed by another group. The evidence of PW 1, 2, 8 and 9 clearly establish the presence of

the appellants armed with weapons and taking part in the assault. The appellants, namely, Burhan Ali A7, Abdul Hamid A13, Mangal Mia A15 and Anwar Mia A16 have not been named by the above four eye witnesses. These four witnesses have undergone exhaustive cross-examinations. Their evidence about the presence of the above appellants and the role attributed to each of them could not be assailed. There are, of course, certain aberrations and minor discrepancies in the evidence of the above witnesses. These aberrations and discrepancies are not of such a degree so as to render them wholly unreliable. Three persons were killed and the witnesses being related to them are not likely to depose falsely to implicate innocent people to the exclusion of the real culprits.

20. Besides PW3 Jiratan Nessa, who went to the place of occurrence found the police personnel capturing Amzad A1 from the river water. Her evidence also lends corroboration to the claim of the above mentioned four prosecution witnesses that they were present in and around the place of occurrence and saw the occurrence.

21 in addition, we have the evidence of PW 10 Hussain Ali, nephew of deceased Tara Mia D1 who was assaulted by Lal Mamud A3 with a dagger causing injury on right side of his neck. No medical evidence is available in support of his claim of assault. However, the defence seems to have admitted that he had sustained injuries while they put the suggestion to him that he had sustained injuries caused by other persons. Anyway, PW 2 Musst. Monowara Khatun claimed to have sustained injuries caused on her person by accused Joinuddin A14 with a dagger when she went close to her husband raising alarm. The medical evidence tendered by PW 5 Dr. M.M. Das quoted hereinbefore shows that she had sustained penetrating injuries on the lateral surface of the right arm and two bruises on the other part of the body. These injuries found on her person have not been challenged by the defence during the cross-examination of PW 5. The impact of the evidence of injuries on PW 2 and 1Q has immense impact on the prosecution version against the appellants inasmuch as the injuries sustained by them clearly indicate involvement of the accused persons named by them.

22. Considering the above evidence and the surrounding circumstances, this Court is of the opinion that the culpability of all the appellants have been established except Burhan Ali A7, Abdul Hamid A13, Mangal Mia A15 and Anwar Mia A16 beyond any reasonable doubt. So far appellants Burhan Ali A7, Abdul Hamid A13, Mangal Mia A15 and Anwar Mia A16 are concerned, it appears that they have not been named by the above witnesses as the assailants of any of the three deceased persons. However, PW 9 made a wild statement in her evidence naming a large number of persons. The names of the appellants Abdul Hamid A13 and Mangal Mia A15 are also absent therein. Abdul Hamid A13 and Mangal Mia A15 cannot be roped with the offence in even by stretch of imagination. In so far as Burhan Ali A7 and Anwar Mia A16 are concerned, although it has been evinced that they were present with arms, they have not been attributed with any overt act on their part. Therefore, these four appellants,

namely, Burhan Ali A7, Abdul Hamid A13, Mangal Mia A15 and Anwar Mia A16 are entitled to benefit of doubt as it cannot be legally concluded that they had shared the common object of the assembly formed to eliminate Tara Mia D1, Saket Ali D2 and Owaz Khan D3.

23. PW 11 Shri Ratneswar Sarma, the Investigating Officer in his evidence stated that accused Amzad Ali A1 was arrested from Dhaneswari Beel while he was trying to escape through the water. He has evinced that the dead body of Saket Ali D2 and Owaz Khan D3 were found in the river water and sent to Barpeta Civil Hospital for Post Mortem examination. According to him, except Amzad A1 other accused persons could not be arrested till 16.8.1989 despite raids in their respective houses. The absence of the accused persons for about 12 days from their respective residences also appears as a circumstances adverse to them. Nothing significant could be brought out during cross examination.

24. Accused Nallu was acquitted by the learned Sessions Judge although PW 2 and 8 have attributed specific role being played by him. However, there is no appeal by the State and at this belated stage the situation cannot be salvaged.

25. We have given our anxious consideration to the decisions available in AIR2000SC 373,2001 (5)SCC235,2001 CR.L.J. 3969, 1991 CR.L.J. 454, 1999 CRL.J. 4603, AIR 1984 SC 1622, AIR 1979 SC 1705 and AIR 1990 SC 1982 cited at the bar. There is no conflict with regard to the law sought to be highlighted by the learned counsel for the appellants. When there is clinching evidence to implicate the accused persons in an alleged crime and the Court is convinced about their culpability, technicalities of law cannot clog the process of justice. Three persons lost their precious life for no discernible reason. Hence, in the given circumstances, we are not inclined to interfere with the conviction of the appellants except Burhan Ali A7, Abdul Hamid A13, Mangal Mia A15 and Ariwar Mia A16.

26. The evidence on record clearly indicate that the accused persons had thrown the dead body into Pahumara river. The dead body of Saket Ali D2 and Owaz Khan D3 could be recovered. The dead body of Tara Mia D1 could not be recovered. The occurrence took place in an open field near the river. The accused persons after commission of the crime threw away the dead bodies into the river water to cause disappearance of evidence of the offence. Therefore, their conviction under Section 201 IPC needs no interference.

27. In the result, the appeal is disposed of and the conviction and sentence of all the appellants except Burhan Ali A7, Abdul Hamid A13, Mangal Mia A15 and Anwar Mia A16 are hereby confirmed. The appellants Burhan AH A7, Abdul Harm"d A13, Mangal Mia A15 and Anwar Mia A16 are acquitted on benefit of doubt.