

(2016) 07 GAU CK 0070

In the Gauhati High Court

Case No : Criminal Appeal No. 65 (J) of 2012

Ashok Rajowar And Haren Rajowar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 18-07-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 300

Citation : (2017) 1 GauLR 11

Hon'ble Judges : Ajit Singh, CJ. And Suman Shyam, J.

Bench : Division Bench

Advocate : Mr. D Das, learned Additional Public Prosecutor, Assam, for the Respondent; Ms. Rita Boro Bora, learned Amicus Curiae, for the Appellant/Accused

Final Decision : Partly Allowed

Judgement

Ajit Singh, C.J. - Appellants Ashok Rajowar and Haren Rajowar have been convicted under Section 302 read with 34 of the Indian Penal Code and sentenced them to imprisonment for life and fine of Rs.5,000/- with default stipulation for committing the murder of Poresh Nath Rajowar, aged 42 years.

2. According to the prosecution case, appellants are nephew of Poresh Nath Rajowar. They lived in the same small house situated at Mekipur Tea Estate, falling within the jurisdiction of Police Station Nazira, District Sivasagar. The portion of appellants and that of Paresh Nath Rajowar in the house was however divided by a partition wall. On 20.8.2005, sometime in the evening, appellants caused head injuries to Paresh Nath Rajowar with a rod and axe in front of their house over some dispute. The incident was witnessed by Sila Kosta Rajowar (PW 2), wife of Poresh Nath Rajowar. She shouted for help and the appellants fled. After sometime, the local residents gathered at the place of occurrence. Paresh Nath Rajowar was taken to Mekipur Tea Garden Hospital, but there he succumbed to injuries.

3. Sila Kasta Rajowar along with Radha Kanta Gowala (PW1) went to Police Station and lodged the Ejahar Exhibit 1, wherein she categorically named the appellants as assailants of Paresh Nath Rajowar. The police then came and prepared the Inquest of the body. The police also sent the body to Joysagar Civil Hospital for post mortem examination. The police even seized a blood stained shirt of Paresh Nath Rajowar vide Material Exhibit 1 and the rod vide Material Exhibit 2 from the place of occurrence pursuant to the statements of appellants.

4. Dr. Pranab Kumar Dutta (PW 9) conducted the post mortem examination on the dead body of Paresh Nath Rajowar. He found two lacerated wounds on the head of Paresh Nath Rajowar having fracture. The doctor, in his post mortem examination report Exhibit 5, opined that injuries were ante mortem in nature and sufficient to cause the death of Paresh Nath Rajowar. The doctor has also opined that injuries could have been caused with the seized iron rod exhibit 2 and not by fall on hard substance.

5. During trial, the appellants abjured their guilt and pleaded false implication in the case. Haren Rajowar, while being examined as an accused, stated that he was not present in the house at the time of incident. Ashok Rajowar, on the other hand, admitted that there was a land dispute with Paresh Nath Rajowar, but he died accidentally. Ashok Rajowar also admitted that a blood stained iron rod was seized from his house.

6. The trial court, relying upon the evidence of Sila Kosta Rajowar and the medical evidence brought on record, convicted and sentenced the appellants as aforesaid.

7. Sila Kosta has testified that the appellants lived in the same small house where she lived along with Paresh Nath Rajowar, but their respective portions were intersected by a partition wall. According to her evidence, on the date of incident, Paresh Nath had purchased GI sheet to construct a house on his own land and asked the appellants to construct a separate house on their land. Sila Kosta has also testified that on this, the appellants called Paresh Nath Rajowar to their room and assaulted him with an axe and rod. Sila Kosta has further testified that appellants after assaulting Paresh Nath dragged him upto the door of their house and fled from the scene of occurrence. In the cross examination, Sila Kosta has however admitted that on the date of incident, Paresh Nath had consumed liquor at a function held in the neighbourhood and on his arrival in the house, he triggered a quarrel with the appellants over the issue of land. As already mentioned above, the appellants are closely related to Paresh Nath and Sila Kosta. Nothing has been brought out in the cross examination of Sila Kosta to discredit her evidence. The evidence of Sila Kosta has also been substantially corroborated by the post mortem examination report of Paresh Nath. Not only this, even the appellant Ashok Rajowar has admitted while being examined as an accused that a blood stained rod was seized from his house. We, therefore, find the evidence of Sila Kosta reliable and trustworthy.

8. In view of the aforesaid ample evidence against the appellants, the learned counsel has not assailed the prosecution story which is well-founded and fully proved. We accordingly confirm the finding of the trial court that appellants caused the death of Paresh Nath Rajowar.

9. Learned counsel for the appellants has however argued that even accepting the prosecution version in totality, the offence against the appellants would not be under Section 302 of the Indian Penal Code, but under Part I or Part II of Section 304 of the Indian Penal Code.

10. In the case of *Muthu v. State* AIR 2008 SC 1, it has been held that when in the heat of the moment or in a fit of anger a person does an act without premeditation that person must also be punished but his punishment should be lesser than that of premeditated offences. The Supreme Court has observed that it is for this reason that Exceptions 1 and 4 have been inserted in Section 300 of the Indian Penal Code. Exception 4 to Section 300 of the Indian Penal Code clearly provides that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

11. As already seen above, the evidence of Sila Kosta reveals that appellants are close relations. They are, in fact, nephew of Paresh Nath Rajowar and on the date of incident, Paresh Nath Rajowar had returned home after consuming liquor and triggered a quarrel with the appellants over the issue of land. It appears that appellants were asked by Paresh Nath Rajowar to construct a separate house and in a heat of passion they suddenly dealt a blow or two on the head of Paresh Nath Rajowar with an iron rod which was kept in the house.

12. Having regard to the circumstances in which the incident took place particularly the act of appellants, we are unable to believe that they had any intention to cause the death of Paresh Nath Rajowar. It can safely be held that they had the knowledge that by giving a blow or two with the iron rod on the head of Paresh Nath Rajowar, he would die.

13. Consequently, we set aside the conviction of the appellants under Section 302 of the Indian Penal Code and the sentence of life imprisonment awarded to them and instead we convict them under Section 304 Part II of the Indian Penal Code and award a sentence of 6 (six) years. The sentence of fine is however affirmed.

14. With the above modification, the appeal is partly allowed.