
(2009) 02 GAU CK 0036
In the Gauhati High Court
Case No : Criminal Appeal (J) 21 of 2003

Bali Charan Kalita

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 84

Citation : (2009) 1 GLD 611

Hon'ble Judges : Hrishikesh Roy, J;Aftab H. Saikia, J

Bench : Division Bench

Advocate : R.D. Mozumdar, Amicus Curiae, for the Appellant; K.C. Mahanta, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—Heard Ms. R.D. Mozumdar, learned amicus curiae appearing on behalf of the Appellant. Also heard Mr. K.C. Mahanta, learned public prosecutor.

2. This appeal is presented against the judgment dated 31.3.2003 in session case No. 27 (K)/2000 passed by the learned Ad hoc Addl. Sessions Judge, No. 2, Kamrup, whereby the Appellant has been convicted for an offence u/s 302, IPC and has also been sentenced to imprisonment for life and to pay fine of Rs. 2,000/- and in default, to imprisonment for a further period of 3 months.

3. The prosecution case as revealed from the FIR indicates that at about 3/4 a.m. in the early morning on 20.1.1999, the accused Bali Charan Kalita beat his father Muhin Chandra Kalita (hereinafter referred to as the deceased) mercilessly while the deceased was alone at home. Having learnt of the incident, the neighbours rushed to the home of the deceased and found the deceased in a moribund state. The deceased was immediately admitted to the Gobardhan Primary Health Centre but he died at about 11 O'clock.

4. Following investigation of the case launched on the basis of the FIR, the Appellant was charged with the murder of his father. The accused pleaded not guilty and accordingly the case was put to trial.

5. On behalf of the prosecution, 9 witnesses were presented whereas defense produced no witness.

6. On perusal of the evidence of the witnesses, PW-1, PW-2, PW-3, PW-4 and PW-5, who were related to the deceased and were also near neighbours, it appears that none of them were eye-witnesses to the incident and had reached the place of occurrence, after the deceased was assaulted.

However these witnesses stated that they saw that Appellant at the place of occurrence. But these PWs also deposed that the Appellant suffered from mental disorder. Of them, PW-3 Sabitri Kalita, (aunt of the Appellant) stated that the Appellant Bali Charan had mental disorder and he has been suffering such disorder, since 6/7 years before the death of his father.

7. PW-6 who is a neighbour of the deceased and was not a related person also stated that the Appellant Bali Charan had mental disorder. This witness stated that there was no previous quarrel between the accused and the deceased.

8. PW-8, Dr. H.K. Mahanta who conducted the post-mortem on the deceased gave evidence on the injuries found on the body. They may be noted for ready reference:

(i) Incised wound 4 cm x 0.5 cm scalp deep 4 cm above the left ear.

(ii) Incised wound 4 cm x 0.5 cm scalp deep on left temporal area 3 cm above the left ear.

(iii) Incised wound 2 cm x 0.5 cm on left ear.

(iv) Incised wound 2 cm x 0.3 cm bone deep over the left nostril process.

(v) Incised wound 2 cm x 0.5 cm bone deep on left molar process.

(vi) Abrasion 2 x 1 cm, 1 x 1 cm on left forehead and eyelid.

(vii) Contusion of the cheek left side over the mandible (sic) 6 cm x 5 cm. The left side of the mandible (sic) found fractured.

(viii) Abrasion 2 x 1 cm on right shoulder.

(ix) Scalp travers fractured on the part of scalp from left ear-hole to the right one across the sphenoid bone.

(x) Subdural haemorrhage present on both sides.

(xi) Contusion of the brain on the left parital and occipital area 11 cm. x 8 cm. Other organs are healthy.

It appears from the above evidence that injuries (i) to (v) were incised wounds

and were result of assault by sharp cutting weapons, whereas the remaining 6 injuries were administered by blunt force impacts.

9. PW-9 was the IO of the case and in his evidence he stated that he seized a "Pira" (a kind of low wooden stool) from the place of occurrence and "Pira" was used to assault the deceased.

10. Assailing the conviction, Ms. R.D. Mozumdar, learned amicus curiae submits that all the six neighbourhood witnesses deposed that Appellant had been suffering from mental disorder. Accordingly the learned Counsel contends that the benefit of Section 84 of the IPC should be available to the Appellant. The learned Counsel submits that even assuming that the deceased died as a result of the blows administered by the Appellant, considering the fact that he was a lunatic, and was incapable of knowing the nature of act committed, his act ought not to be treated as an offence and conviction for such acts of a lunatic cannot be sustained in law.

11. To deal with the first contention of the learned Counsel, it is well known that Section 84 of the IPC is based on the fundamental principles of criminal law that mens rea must be present to hold any person guilty, of a crime. Whether the benefit of the legal maxim "actus non reum facit nisi mens sit rea" (an act does not constitute guilt unless done with a guilty intention) would apply in the instant case, would depend upon the state of mind of the deceased, when he made the assault on the deceased. After all, even a person who is commonly described as a person suffering from mental disorder, is capable of having at interval, the requisites state of mind, when he can distinguish between what is right and what is wrong.

12. Although it has appeared from the evidence on record that the Appellant was a person suffering from mental disorder, there is no evidence available on record to show the state of mind of the Appellant, at the time when incident took place and there is no evidence also to show, that the Appellant was actually afflicted by mental disorder, at the time when he made the assault on the deceased.

Under the above circumstances we are unable to agree with the submission made that the Appellant would be entitled to the benefit of Section 84 of the IPC.

13. But we are also concerned with another significant feature of this case. This relates to the nature of the injuries seen on the deceased as revealed by the forensic evidence of the doctor who conducted the post-mortem. The investigating officer (PW-9) stated that the deceased was assaulted with a "Pira" (a kind of low wooden stool) and it is common knowledge that an assault with a "Pira", cannot result in any of the incised injuries [i.e. injuries (i) to (v)]. Therefore, it is obvious that the sharp injuries noticed on the deceased could not have been inflicted by a "Pira", even if it is assumed that a "Pira" was used by the Appellant to assault the deceased.

14. From the exbt. 2 seizure list, it appears that the "Pira" used to assault the

deceased was seized from the house of the deceased. Several witnesses had noticed a "Pira" in the hands of the Appellant. But significantly no evidence is on record that the seized "Pira" had any bloodstains. Therefore, there is also serious doubt as to whether it was the "Pira" found in the hands of the Appellant, that was used to administer fatal blows on the deceased.

15. There is no explanation from the side of the prosecution as to why as many as 5 incised injuries were found on the body of the deceased, as no sharp edged weapon of assault has been produced by the prosecution. It is also not the case of the prosecution that the Appellant had assaulted the deceased with any sharp weapon, capable of causing the incised injuries.

16. Under the above circumstances, we are unable to reasonably conclude that the deceased died because of the injuries found on his body administered only by the blows given by the "Pira". There is no explanation at all as to how the incised injuries were found on the body of the deceased. We cannot rule out the possibility of another person inflicting the 5 incised wounds, as it is not the case of the prosecution that the Appellant had used any sharp edged weapon, capable of causing the incised injuries. Therefore we cannot persuade ourselves to take the view that the prosecution has established the case against the Appellant, beyond all reasonable doubt.

17. It is pointed out by the learned public prosecutor that the Appellant had admitted in his Section 313, Code of Criminal Procedure statement that he had assaulted his father with a "Pira" and then his father died. Accordingly it is contended by Mr. Mahanta that the conviction of the Appellant u/s 302 of the IPC is justified.

18. With regard to the above submission of the learned public prosecutor, we have already noted that the incised injuries found on the body of the deceased are not explained by the prosecution. We also notice that the said incised injuries cannot be justified reasonably by the admission made by the Appellant.

19. Under such circumstances, we are not persuaded to sustain the conviction of the Appellant only on the basis of the admission made by the Appellant of the assault on the deceased, by the "Pira".

20. In view of above, we are of the considered opinion that the Appellant is entitled to the benefit of the doubt and accordingly we set aside the impugned conviction and sentence dated 31.3.2003. The appeal stands allowed accordingly.

21. Before parting with the case, we record our appreciation for the invaluable resistance rendered by Ms. R.D. Mozumdar, learned amicus curiae and we order that she is entitled to get her professional fees which we quantify at Rs. 5,000/-.

22. Send down the LCR.