
(2003) 12 GAU CK 0064
In the Gauhati High Court
Case No : Criminal Appeal No. 167 of 1995

Bankim Chandra Kalita	Vs	APPELLANT
The State of Assam		RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 304

Citation : (2004) 2 GLR 631

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : C.C. Deka, R.K. Saikia and M. Kalita, for the Appellant; F.H. Laskar, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—The appellant, before us, Sri Bankim Chandra Kalita was convicted u/s 304 Part-III of IPC by the Sessions Judge, Nalbari in Sessions Case No. 30/1993 and he was sentenced to imprisonment, for five years and to pay a fine of Rs. 1,000 in default to further imprisonment for two months.

2. The prosecution story of the case, in brief, is that on 8.7.1992 at about 8.00 a.m. a quarrel took place between the two neighbours, namely, Bankim Ch. Kalita and Tarju Kalita, whereupon it is alleged, the accused appellant Bikram Ch. Kalita assaulted the deceased Tarju Kalita with a hoe causing injury on the head. The injured was removed to hospital and F.I.R. Exhibit-1 was lodged by the wife of the injured. Subsequently, the injured succumbed to the injuries.

3. P.W. 9, Dr. K.C. Basumatary, who held autopsy on the dead body and found the following injuries on the person of the deceased ;

"Lacerated wound 4.5 cm x 2.5 cm with stitches in the right side of the forehead 3.5 cm lateral to the midplane of the body 4.5 cm above the supra orbital ridge.

Lacerated wound 4 cm x 1.5 cm with stitches left side of the forehead 5.5 cm

above the left supra orbital ridge, 2.5 cm lateral to the midplane of the body fight of the body.

Both by eyelids are bruised. Scalp. Injury as already described.

Skull : Depressed communicated fractures present in the both sides of the frontal lobes vertebra-healthy.

Lacerated in the frontal region. Epidemias and sub-dural haemorrhage present. Both frontal lobes are lacerated."

4. In the opinion of the Doctor, the death was due to coma as a result of head injury which was ante mortem. The injury was caused by blunt impact and was homicidal in nature.

5. In this case, the death of the deceased as a result of the injury is not disputed. The informant, Smt. Bimala Kalita, is the wife of the deceased. She was not an eyewitness of the occurrence. She was informed about the incident by Sri Nagen Deka, P.W. 2, Surandra and others, who brought her husband in injured condition in the house and thereafter they took him to the hospital and she lodged the FIR, Exhibit-1.

6. The entire prosecution story rests on the testimony of three eye witnesses, namely, Sri Chandiram Kewat, PW 1, Sri Nagen Deka, PW 2, and Sri Atul Kalita, PW 4. They are co-villagers and at the relevant time they were working in the fields, which are nearer to the place of occurrence. They have stated that while they were working in their respective fields, they saw an altercation going on between the accused and the deceased, relating to flow of the water in the field. Thereafter they saw the accused giving a blow with a hoe on the head of the deceased. They tried to intervene but the accused threatened them. The accused also assaulted the deceased on the chest. After the accused left the scene, they removed the injured to his house and informed the incident to his wife.

7. The three eye witnesses have been cross-examined at length but nothing has come out to show that they are deposing falsely or that they have invented a story although no such incident took place. Their evidence is fully supported by the medical evidence on record. In fine, the evidence of the three witnesses is clear, cogent and credit-worthy, as they are all independent witnesses and they had no axe to grind against the accused, they have dutifully deposed to what they had seen. As a matter of fact PW 1 has categorically stated that it was the deceased who first tried to assault the accused, whereupon the accused assaulted the deceased.

8. The learned defence counsel has raised the plea that whatever the accused had done was in the exercise of right of private defence and as such he is not liable. Admittedly the accused did not sustain any injury in the above incident. Moreover I find that the accused and deceased were working in the field. Both of them were carrying hoe with them, i.e., both of them were armed with hoe. Moreover, I find that the dispute between the parties arose in respect of flow of

water in the field and when the altercation proceeded one of them tried to assault others. The accused was not satisfied by assaulting the deceased on the head with a hoe, and when the deceased fell down, but he continued to assault causing other injuries.

He even threatened the witnesses from intervening. In the facts and circumstances of the case, the right of private defence, even if any, did not extend to causing death. The Trial Court gave the benefits and held the accused guilty of offence u/s 304 Part-II of IPC only and he has been properly dealt with as required under the law.

9. In the result, I find no merit in the case. The appeal accordingly stands dismissed. The accused appellant is directed to surrender forthwith to serve out the sentence. Send down the Lower Court Records.