
(2015) 07 GAU CK 0035
In the Gauhati High Court
Case No : Criminal A No. 25 (J) of 2012

Bhaiti Bhuyan and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 3 GLT 668

Hon'ble Judges : C.R. Sarma, J; Prasanta Kumar Saikia, J

Bench : Division Bench

Advocate : P. Baruah, Amicus Curiae, for the Appellant; S. Jahan, P.P.,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

C.R. Sarma, J—Heard Ms. P. Baruah, learned Amicus Curiae, appearing for the appellants. Also heard Ms. S. Jahan, learned Addl. P.P., Assam, appearing for the state respondent. This appeal, from jail, is directed against the judgment and order dated 16.12.2011 passed by the learned Sessions Judge, Jorhat, in Sessions Case No. 38(JJ)/2009. By the impugned judgment and order, the learned Session Judge convicted the appellants under sections 302/34 IPC and sentenced them to suffer imprisonment for life and pay fine of Rs. 1,000/- each in default suffer simple imprisonment for another period of one month.

2. Aggrieved by the said conviction and sentence the convicted persons, as appellants, have come up with this appeal.

The prosecution case, in brief, is that, on 23.12.2008, at about 6:30 p.m. when Sri Bijoylal Bhuyan (hereinafter called the deceased) was serving meal to his wife and their two children, the appellants, armed with Kalam Katari (pruning knife) appeared in the house of the deceased and called him out. Accordingly, as soon as the deceased came out from his house they assaulted him causing injury as a result of which he died on the spot. The house of the deceased was situated near

the railway line and the accused persons left the place by boarding a train. The dead body of the deceased was found lying in between his house and the railway line.

On receipt of the FIR, police registered a case and launched investigation into the matter. During investigation police seized two Kalam Kataries, one rod and one axe vide seizure lists (Ext. 2 and 3), conducted inquest of the dead body and sent the same for post mortem examination. Police also arrested the appellants.

At the close of the investigation police submitted charge-sheet under Section 302/34 IPC against the appellants. The offence being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions by the learned SDJM (S), Jorhat and the learned Sessions Judge, Jorhat framed charge under Section 302/34 IPC. The charge was read over and explained to the accused persons to which they pleaded not guilty. They pleaded to be tried. In order to prove the case the prosecution examined as many as 10 witnesses including the medical Officer (P.W. 7), who performed the autopsy of the dead body and the investigating officer (P.W. 10).

After examination of the prosecution witnesses, the accused persons were examined under Section 313 Cr.P.C. They denied the allegations, brought against them and declined to adduce the defence evidence.

Considering the evidence, on record, more particularly, the evidence of the eye witnesses i.e. P.W. 2, who was the son of the deceased and the circumstantial evidence surfaced from the evidence on record, the learned Sessions Judge, found the appellants guilty of the offence under Section 302 IPC and accordingly convicted and sentenced them as indicated above.

3. Ms. P. Baruah, learned Amicus Curiae, appearing for the appellants has submitted that except the evidence of P.W. 2, who being the son of the deceased was an interested witness, there is no other substantive evidence against the appellant. It is also submitted that there is no corroboration in the evidence of P.W. 2 and that the learned Sessions Judge committed error by recording the conviction and sentence against the appellants, without sufficient convincing evidence. It is also submitted that there are contradictions regarding finding of the dead body. The learned amicus curiae has submitted that the prosecution failed to prove the case against the appellants beyond all reasonable doubt and that learned Sessions Judge committed error by holding the appellants guilty of the offence under Section 302/34 IPC.

The learned Amicus Curiae has submitted that the impugned judgment and order cannot be maintained and that the appellants are entitled to be acquitted.

4. Refuting the said argument advanced by the learned Amicus Curiae, Ms. S. Jahan, learned Addl. P.P., supporting the impugned judgment and order, has submitted that there are sufficient evidence indicating the involvement of the appellants with the crime. Referring to the oral evidence of P.W. 2, who appeared

to be the eye witness, the learned Addl. P.P. has submitted that considering the time of occurrence and the facts and circumstance, P.W. 2, who was the son of the deceased, was the most natural eye witness and as such his evidence cannot be disbelieved, only on the ground that he being the son of the deceased was an interested witness.

The learned Addl. P.P. has submitted that the evidence of P.W. 2 has been corroborated by the other witnesses who stated that P.W. 2 had informed them about the involvement of the appellants. It is also submitted that the medical evidence, given by the P.W. 7 regarding use of weapon supports that oral evidence, given by P.W. 2 who stated that the deceased was assaulted by the appellants by knives i.e. pruning knives. The learned Addl. P.P. has further submitted that the oral evidence given by the said eye witness i.e. P.W. 2, coupled with the circumstantial evidence revealed by the witness, examined by the prosecution, and the medical evidence sufficiently prove that none other than the appellants, had caused the death of the deceased.

5. In order to appreciate the arguments, advanced by the counsel of both the parties and to examine the correctness of the impugned judgment and order, we feel it appropriate, to examine the evidence on record.

Admittedly, the occurrence took place in the evening hours i.e. at about 6-30 p.m. as stated by the P.W. 2 and P.W. 3 i.e. the son and the wife of the deceased respectively. The appellants had called the deceased when he was serving meal to the other members of the family including P.W. 2 and P.W. 3. Therefore, P.W. 2 who was the son of the deceased and P.W. 3 who was the wife of the deceased were the most natural witness to see the occurrence. As stated by P.W. 2, his mother i.e. P.W. 3 had poor vision and as such she could not see the occurrence.

P.W. 2 in his evidence clearly stated that when his father was called by the appellants he also followed his father and saw the appellants assaulting his father. He further stated that though he raised alarm, nobody heard the same because of the sound of the train, which was passing through at the relevant time.

This witness further stated that the appellants had left the place of occurrence after inflicting the injuries, by boarding the train. Though P.W. 2 was cross examined by the defence, his evidence regarding assault by the appellants remained undemolished. P.W. 2 further stated that he, along with his mother, proceeded to the house of the Gaonburah to inform him about the incident. P.W. 1 did not see the occurrence. He was reported by the wife of the deceased.

P.W. 3 i.e. the wife of the deceased stated that due to her poor eye sight she could not see properly and that the appellants had called her husband when he was serving meal to them. P.W. 3 supporting the evidence of P.W. 2 stated that her son had shouted that his father was cut by the accused persons. She clearly stated that P.W. 2 told her that the appellants had inflicted injuries to his father.

P.W. 4, 5 and 6 were reported by P.W. 2. They also stated that they were informed, immediately after the occurrence, that the appellant had assaulted the deceased causing his death.

P.W. 8, who did not see the incident, stated that on the next morning, he found the dead body of the deceased in front of his house. He was also informed by the members of the family of the deceased that the appellants had caused the death of the deceased.

P.W. 9 did not see the occurrence. He stated that he came to know about the incident from the Gaonburah and that he accompanied the Gaonburah to the house of the deceased, wherein they found the dead body of the deceased. He also stated that the members of the family of the deceased had informed him that the appellants had caused the death of the deceased.

6. From the above it appears that all the said independent witnesses were informed by P.W. 2 i.e. the son of the deceased that the deceased was killed by the appellants. Though the said witnesses were cross-examined, on behalf of the defence, their evidence remained undemolished. From this evidence it is found that they were informed by P.W. 2 about the involvement of the appellants. Hence, we find sufficient corroboration in the evidence of P.W. 2 to believe that he had seen the occurrence himself and that he informed the other witnesses, immediately after the incident.

There is nothing on record to find that the P.W. 2 had any reason or grudge to falsely implicate the appellants, leaving the actual culprits, if any. Therefore, we find sufficient force in the evidence of P.W. 2 to believe that none other than the appellants had caused the fatal injuries to the deceased, as a result of which he died.

7. The medical evidence given by P.W. 7, who performed autopsy of the deceased, indicates that the deceased sustained the following injuries-

"Injury: 1. Incised wound over the left chest about 10 x 5 x 5 c.m. extended from left deltoid to the sternum. Left brachial anterior Disulc.

Thorax: left chest wall - incised wound as described earlier as 10 x 5 x 5 c.m., ribs and cartilage intact.

Incised pleural space - left side with collection and blood in the pleural space.

Left lung: Incised wound as 1 x 1 x 1 c.m.

Muscles, bones and joints:- Muscles: Deltoid and left pectoralis muscles are incised, indurated. The head of left haemorrhage.

Incised Head of Humerus.

The injuries described earlier are caused by sharp weapons. All the injuries are ante-mortem in nature."

8. From the said medical evidence it appears that the injuries were caused by sharp weapons. Admittedly Kolom katary i.e. pruning knife is a sharp weapon. P.W. 2 had clearly stated that the injuries were caused by pruning knife i.e. sharp cutting weapon. The medical evidence aforesaid supports the oral evidence given by P.W. 2 with regard to the use of weapons. The I.O. has also seized two pruning knives, one iron rod from the place of occurrence. The seizure of two pruning knives from the place of occurrence, coupled with medical evidence aforesaid corroborates the oral evidence of P.W. 2, regarding use of Kalom kataries by the appellants.

The medical officer opined that the death of the deceased was caused as a result of severe blood loss from the injuries sustained by the deceased. From the above discussed medical evidence, it appears that the death of the deceased was a homicidal one. The evidence of P.W. 2 has sufficiently proved that the appellants had assaulted the deceased causing his death.

The use of two sharp cutting weapons in inflicting blows on vital parts of the body i.e. chest and lung area indicates that the appellants had inflicted the injuries with intension to cause the death of the deceased. That apart from the evidence of P.W. 2 it is found that the appellants had come with the said weapons of assault and after calling out the deceased from his house had instantly attacked him with the said weapons without any provocation. This circumstance reveals the prior intention of the appellants to cause the death of the deceased. Though the I.O. was cross-examined by defence, no major contradiction could be elicited to discredit the evidence, given by P.W. 2.

In their statement given under Section 313 Cr.P.C. also the accused persons, except denying the allegations, brought against them, did not take any other plea.

9. From the above discussed evidence, we have no hesitation in holding that the appellants had assaulted the deceased with intention to cause his death. Therefore, we find that the learned Sessions Judge committed no error or illegality by holding the appellants guilty of offence under Sections 302/34 IPC.

Hence, we find no merit in this criminal appeal. This appeal is dismissed.

Before we part with the judgment, we acknowledge with appreciation the services rendered by Ms. P. Baruah, Amicus Curiae and order that an amount of Rs. 7,500/- be paid to Ms. Baruah as her remuneration by the State Legal Services Authority.

Return the LCR.