
(2006) 03 GAU CK 0027
In the Gauhati High Court
Case No : Criminal Appeal No. 73 of 2000

Bhulan Natta

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 16-03-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2006) GLT 587 Supp

Hon'ble Judges : Aftab H. Saikia, J;A.B. Pal, J

Bench : Division Bench

Advocate : A. Ghosh, for the Appellant; D. Sarkar and R. Debnath, for the Respondent

Judgement

A.H. Saikia, J.—Having found the Appellant, Sri Bhulan Natta, guilty in killing his wife Smti Malati Natta and his mother Smti Hashya Bala Natta, the learned Sessions Judge, West Tripura, Agartala by his order dated 8.6.95 in Sessions Trial No. 122(W.T./A) 1994 convicted him u/s 302 IPC and sentenced accordingly to suffer for rigorous imprisonment (for short, "R.I.") for life and to pay fine of Rs. 5000/-.

2. The learned Sessions Judge, on proper appreciation and scrutiny of the testimony of the witnesses particularly RW.-2, Smti Anju Das (Natta), being the sole eye witness, P.W-10, the Doctor who conducted the autopsy on the dead bodies of the two deceased as mentioned above and P.W. 12, the Investigating Officer (for short, the "I.O.") including the material exhibits on records, believed the prosecution story, as unfolded by P.W.-2 to P.W.1, Abani Natta, on the basis of whose statement, the police lodged the F.I.R. on 15.7.90 with Airport Police Station initiating investigation against the Appellant to be charge-sheeted under the above mentioned section and held that the prosecution successfully established the guilt against the Appellant beyond reasonable doubt.

3. The conviction and sentence aforementioned have been assailed in the instant criminal appeal.

4. We have heard the arguments advanced by Mr. A. Ghosh learned Counsel appearing for the Appellant and Mr. D. Sarkar, learned P.P. along with R.C. Devnath, learned Counsel representing the State of Tripura at length and also have meticulously scanned the deposition of the witnesses who are 12 in numbers including sole eye witness, the Doctor and the I.O.

5. P.W. 1, disclosing the prosecution case to P.W. 12, the I.O., who wrote the FIR above mentioned as dictated by him, stated that on 15.7.90, being Sunday, hearing hue and cry, he came over to the house of the Appellant at about 5.15 O'clock morning and found him standing in front of the door of his hut with an iron rod in hand. He came to learn from P.W.-2, wife of the younger brother of the Appellant that the Appellant killed his wife and mother above named striking them with an iron rod and left them inside the room. When he proceeded in front of the door of the room, he found the dead bodies of both the deceased above mentioned lying on the floor of the room with bleeding injuries. When he asked the Appellant as to what happened, he chased him with the iron rod. However, he escaped from the place out of fear and thereafter he came to learn from the people that when a neighbour namely Swapan Das, P.W.-7, proceeded to save Appellant's mother Smti Hashya Bala, the Appellant dealt a severe blow in his head with a big rod as a result of which he sustained severe bleeding head injury and he was sent to Norsing-garh Hospital for treatment.

6. The sole eye witness, P.W.-2, Anju Das (Natta), in her deposition in chief, claimed that when she was in her hut on the fateful day of Sunday evening when her husband was not in her house, she heard hot exchange between the Appellant and his wife Malati in presence of their mother-in-law, the deceased, Smti Hashya Bala Natta. At that time she heard a sound in the hut of the Appellant and she came out from her hut to see what happened. She saw the Appellant was standing in the hut with iron rod and the wife of the Appellant was lying on the ground with bleeding injury on her head. At that time except the Appellant and his wife, there was none in the hut. When she cried, her mother-in-law, Smti Hashya Bala Natta came there and seeing the incident, she became nervous and entered into the hut saying that his son killed his wife. When her mother-in-law entered into the hut, the Appellant gave a blow on her head and she fell down on the ground with injury and thereafter both were found dead. She asserted that the Appellant was standing on the front of the door with a rod in his hand. Hearing her cry, P.W.-3 Maya Rani Natta who was declared hostile by the prosecution, also came there and thereafter Abani Natta, P.W. 1 with other persons also came. Answering to the query of the Court, this witness stated that the Appellant was suffering from mental disorder for about 15 days prior to the incident of the murder. After the incident of murder, he married again and that wife also died and thereafter he married again. In her cross, she deposed that the Appellant was found insane before the incident and he was found to sit inside the hut by closing its door and was also found not to take food out of insanity.

7. Pertinent it to mention that the plea of insanity was taken by the defence but

the same was not accepted by the trial Court and on consideration of the fact situation and circumstances, this Court, does feel that the learned trial Court was right in rejecting such plea because such factum of insanity, being the burden of the accused, was never proved. Even no medical examination or any form of report by way of exhibit was ever brought to the notice of the Court below during the trial.

8. P.W-10, the Doctor, in his report of post mortem conducted by him on the dead bodies of the deceased Smti Malati Natta and Smti Hashya Bala Natta, found the following injuries respectively.

(Malati Natta):

During examination following external appearance were found:

1. Body was found healthy.
2. Incised wound in the right ear 1" x 1" bran cavity involving muscles and cartilaginous, wound, and vessels.
3. Incised wound in the left ear for 1/2" x 1/2" brave cavity involving cartilaginous bones and vessels.
4. Sharp cutting injury - left ear 1" x 1/2 x 1/4".

Cranium and spinal canal-

Skull was found injured. Membranes and brain and spinal cord found injured.

(Hashya Bala Natta):

1. Body was found healthy.

On incised wound left temporo parital area of the head on 3 1/2" x 1/2" x brain cavity to occipital area.

2. Multiple minor abrasion face and head.
3. Penetrating injury left angle of the mandible area is 1/2" x 1/2" x oral cavity.

As regards the injuries, the Doctor in his deposition, opined that the head injury as found on Malati could not be done by iron rod shown to him and all the injuries were caused by sharp cutting weapon like dagger, knife etc.

9. We have also analysed the deposition of P.W.-7, Swapan Das, who was assaulted by the Appellant by iron rod. This witness, corroborating with the evidence of P.W.-2, deposed that on hearing the cry in the house of the Appellant, he along with his brother Tapan, P.W.-8 who was tendered by the prosecution, ran to the house of the Appellant and on their arrival there, he saw the Appellant was standing in front of the door of the western vity-hut with an iron rod in his hand. When he tried to enter into the hut to see what had happened, then the accused gave him a blow on his head with an iron rod and he

sustained bleeding injuries and immediately he was taken to G.B. Hospital at Agartala. In his cross, he categorically stated that the Appellant had no bad relation with his mother and wife.

10. On careful scanning of the evidence of P.W.-16, the I.O., it is found that according to this witness, on getting information on 15.7.90 about the said incident, he proceeded to the spot and there P.W-1 lodged an oral ejahar with him which was recorded by him and on being read over the same to PW-1, he admitted the same to be correct and gave his thumb impression on the ejahar. He arrested the Appellant on the spot itself. In cross, he deposed that he did not have any knowledge that the Appellant was suffering from any insanity during the period of investigation. From this evidence, it is clear that the Appellant did not make any attempt to abscond from the place of occurrence.

11. From the close analysis of the testimony of the above witnesses, we do find that the evidence of P.W.-2, the sole eye witness is credible and trustworthy and there is no material available to dislodge this piece of evidence merely on the plea that she was the solitary eye witness. At the same breath, P.W.-7, fully corroborated the deposition of P.W-2. However, he testified in cross that the Appellant had no bad relation with his mother and wife. Medical evidence also supported the case of the prosecution as regards multiple injuries found in the dead bodies of the deceased persons. We have, therefore, no hesitation to hold that both the deceased were killed by the Appellant himself.

12. However, question remains as to whether the Appellant at all intended to kill his wife and mother so as to charge him u/s 302 IPC. There is no dispute that nobody saw the killing of Malati Natta and the conviction of the Appellant for killing his wife was, therefore, basically based of circumstantial evidence. According to P.W.-2, after hearing sound from the house of the Appellant due to the altercation with his wife, she went to the hut of the Appellant whom she found standing with an iron rod and his wife was lying on the ground with bleeding head injury. At that moment, his mother Hashya Bala came running and screaming that he had killed his wife and then only the Appellant struck a blow on her head as a result of which she succumbed. Interestingly the witness did not mention that the Appellant hit his mother with iron rod. It is also seen from the medical evidence that the injuries inflicted on the person of Malati, according to the Doctor's opinion, cannot be done by iron rod. He was specific in his opinion that all injuries were caused by sharp cutting weapon like dagger, knife etc. On the other hand, P.W.-7, the injured, in his cross, deposed that the Appellant had no bad relation with his mother and wife.

13. Under such circumstances, in our considered opinion, it can be safely held that there was no intention of the Appellant to cause death to his wife and mother but definitely intention was to cause severe bodily injuries. Nature of injuries and medical opinion unmistakably are pointing to the fact that bodily injuries inflicted on the deceased persons were of such nature that they were likely to cause death. Accordingly, on consideration of the facts and

circumstances of the case in its entirety, it would be appropriate to convict the Appellant u/s 304 Pt-I IPC instead of Section 302 IPC.

14. Taking into account the incident that took place as far back as in the year 1990 and keeping in view the custodial sentence of the Appellant for more than 10 years as the conviction and sentence was handed down on 8.6.95, we are of the opinion that ends of justice would be satisfied if the Appellant is sentenced for the period already undergone. It is ordered accordingly. Considering the mitigating circumstances, sentence to pay fine is also sent aside.

15. The Appellant be set at liberty forthwith, if he is not wanted in any other case.

16. In the result, this appeal stands allowed to the extent indicated above.

17. Send down the records immediately.