
(2019) 05 GAU CK 0032
In the Gauhati High Court
Case No : Criminal Appeal (J) No. 47 Of 2016

Bijay Pan Tanti

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 10-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 300, 302, 304
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 05 GAU CK 0032

Hon'ble Judges : Achintya Malla Bujor Barua, J; Mir Alfaz Ali, J

Bench : Division Bench

Advocate : Meghali Barman

Final Decision : Partly Allowed

Judgement

1. AM Bujor Barua, J Heard Ms. M Barman, learned Amicus Curaie for the appellant. Also heard Mr. TK Mishra, learned Additional Public Prosecutor, Assam.
2. Flag 'X' of the records containing the memo of appeal shows that notice was duly served on the informant/respondent No.2, but inspite of the same none appears.
3. An ejahar dated 18.11.2014 was lodged by Gaurang Bhumij before the Officer-in-Charge of Selenghat Police Outpost, inter alia, alleging that on 17.11.2014 at about 3.30 P.M., the accused Bijoy Pan Tanti in course of a quarrel between him and his wife at home had caused grievous injury to his wife Rahdoi Pan Tanti by dealing a blow with an axe on her head. In the circumstances, the accused appellant was charged of having committed an offence under Section 302 of the IPC on the ground of having assaulted his wife Rahdoi Pan Tanti with an axe on 17.11.2014 at about 3.30 P.M., with an intention of causing death to her.
4. PW-1, Anil Nayak in his deposition had stated that on the given day, when he was returning from his paddy field, he had noticed that the accused was holding an axe in his hand in the courtyard of his house and at that time the police

arrived. The villagers who were standing at the place of occurrence told the PW-1 that the accused had murdered his wife. PW-1 further deposed that the accused also confessed before the police and in presence of the villagers that he had committed the murder of his wife. PW-1 clearly deposed that he had not seen the occurrence. But in course of a suggestion, he stated that it is not a fact that he did not notice the accused holding an axe in his hand in the courtyard of his house.

5. PW-2, who is a neighbor and whose house is situated in front of the house of the accused in his deposition stated that on the given day, he was present in his house and at about 3P.M, he heard a shout from the wife of the accused. Having heard the shout he immediately came out and proceeded towards the house of the accused. When he arrived at the house of the accused, he noticed that the accused was coming out of the house holding an axe and upon seeing him the accused had confessed before him that he had committed the murder of his wife with the axe that he was holding. Seeing the axe in the hand and after hearing the confession, the PW-2 out of shock and fear returned back to his house. PW-2 further deposed that at that time the accused was apprehended by the villagers and the police seized the axe.

6. PW-4 in his deposition stated that at about 3PM on the given day when he went to fetch water from the tube well he heard some sounds coming out from the accused's house. When he proceeded towards the house of the accused upon hearing the sounds, he saw that many people had assembled there and the accused was also present inside the house and that he did not allow anyone to enter the house. The witness deposed that at that time the accused was holding an axe in his hand.

In cross, the PW-4 stated that the axe belonged to the accused and that axes are found in each and every houses of the locality. Similarly PW-5 also stated that when he went to the place of occurrence he saw the accused was holding an axe in his hand outside the house.

7. The Investigating Officer who deposed as PW-7 also stated in his examination-in-chief that when he reached the house of the accused, he noticed the accused was standing in the house with an axe in his hand.

In cross, the Investigating Officer further confirms that the accused was standing near his house holding an axe in his hand. From the above evidence, it is discernible that all the witnesses had seen that the accused was standing in his house where the occurrence had taken place with an axe in his hand.

8. We further take note of the statement of the accused under Section 313 of the Cr.P.C., where against Question No.1, the accused stated as follows: "Answer:- I know that the informant had lodged an FIR against me. At the time of incident I was in drunken condition and out of intoxication I did the alleged offence. I do not know as to who I committed the offence and it was done only due to excessive drinking."

9. From the statement of the accused under Section 313 Cr.P.C., it is established that at the time of the incident he was in a drunken condition and because of the inebriated condition he had committed the offence and further that the accused even did not know as to upon whom the offence was being committed as it was done due to excessive drinking. The said confession of the accused is also consistent with the deposition of the PW-2 that the accused had made a confession before him that he had committed the murder of his wife with an axe which he was holding at that time.

10. The medical evidence shows the following injuries on the deceased:
"INJURIES:

1) A chop wound of size 3.8 cm x 3.2 cm is present over right side frontal scalp 0.5cm from mid line and 12 cm front right medial eyebrow which is brain deep. Margin of the wound is clean cut, contused and wide gaping of the wound is present. Blood clots are adherent to wound margin which resist washing under tap water.

2) A chop wound of size 2.9 cm x 2.6 cm is present just behind the injury number one which is brain deep and 2cm from mid line and 14 cm from right lateral eyebrow. Margin of the wound is clean cut, contused and wide gaping is present. Blood clot adherent to the wound margin which resist washing under tap water.

3) A chop wound of size 4cm x 3.2 cm is present over right parietal scalp which is brain deep and 2.5 cm from mid line and 16 cm from right medial eyebrow.

4) An incised wound of size 4cm x 3cm is present over parietal scalp 8cm above right ears and 13 cm from right lateral eyebrow which is bone deep. Margin of the wound is clean cut and blood clot adherent to wound margin which resist washing under tap water.

5) An incised wound of size 5cm x 3.4 cm is present over parietal scalp which is bone deep and is 3 cm above right ear and 8 cm above lateral angle of eye. Margin of the wound is clean cut."

11. From the materials on record comprising of the statement under Section 313 Cr.P.C of the accused where he had confessed that he had committed the offence with the axe that he was holding and further the un-rebutted evidences of the witnesses and re-confirmed evidence of the Investigating Officer that the accused was seen at the place of occurrence holding an axe and further the extra-judicial confession made before the PW-2 and also considering the nature of the injuries that were found on the deceased, we are of the view that the act of inflicting the injuries upon the deceased which had caused her death were done by none else other than the accused.

12. But at the same time, we also take note of the conduct of the accused immediately after the occurrence to the extent that he was still holding the axe for quite some time which enabled the other persons who had arrived at the place of occurrence to have seen him holding the axe and further that the

accused had confessed under Section 313 Cr.PC that he had committed the offence in an inebriated condition after having a quarrel with his wife, where such circumstances enable us to bring the act of the accused within the purview of Exception 4 to Section 300 of the IPC.

13. In this respect, we refer to the judgment of the Supreme Court in CrI.A. 839/2019 dated 06.05.2019 rendered in Rambir Vs. State of NCT, Delhi wherein the Supreme Court had the occasion to examine and explain the circumstances where Exception 4 to Section 300 would be applicable. In paragraph 13 of the said judgment, while dealing with the aspect of causing the act with extreme cruelty as was held by the High Court in a judgment under appeal before the Supreme Court, the Supreme Court was of the view that it was clear that the incident had occurred in a sudden fight and there was no pre-meditation and nor that it cannot be that the act of the accused depicts an extreme cruelty. The Supreme Court was also of the view that when an iron rod was picked up at the spur of the moment and was used to compress the neck of the deceased forcefully, in the background of the preceeding quarrel between the parties, such act committed by the appellant was construed to be an act done by the accused in the heat of passion. The Supreme Court was of the further view that having regard to the nature and the manner in which the act was committed in a case where the neck of the deceased was compressed with an iron rod, after a quarrel between the parties, it cannot be said that the act of the appellant was extremely cruel unless ofcourse it can be shown that it was barbaric, torturous and brutal.

14. The Supreme Court further refers to its earlier decision in Surinder Kumar Vs. Union Territory, Chandigarh reported in (1989) 2 SCC 217 wherein it was held that the knife blows which were inflicted in the heat of the moment which caused the death of the deceased was a circumstance where the accused was entitled to a benefit of Exception 4 to Section 300.

15. When we examine the aforesaid propositions being laid down by the Supreme Court in Rambir (supra) and compare the same with the circumstances being depicted from the evidence recorded in the present case, we find that in the instant case also the accused was in an inebriated condition and he had a quarrel with the deceased. Further evidence as stated by PW-4 also shows that axes were found in each and every household of the locality from which the accused and the deceased came from. Further conduct of the accused subsequent to the occurrence in continuing to hold the axe for a sufficient period of time for it to be seen by all such persons who arrived at the place of occurrence including the police, his extra judicial confession before the PW-2 and further his stand under Section 313 Cr.PC where he had confessed to the occurrence and also explained that it was done in a circumstance where there was a quarrel with his wife and he was in a highly inebriated condition, leads us to a conclusion that the present case also comes within the purview of Exception 4 to Section 300 of the IPC.

16. Having concluded that the act of the accused can be brought within the purview of Exception 4 to Section 300, we are now required to look as to whether the evidence on record shows any intention on the part of the accused appellant to cause the death of the deceased or the act was done without any such intention. The evidence on record clearly indicates that the accused appellant was in a highly inebriated condition to the extent that, as per his statement under Section 313 Cr.P.C that he was even not in a position to know that the axe was seized from him by the police and also as to upon whom the offence was committed, which also is an indication as to the mental state of the accused appellant at the time when the act was committed by him. If the accused appellant was in such mental condition where his senses were not functioning properly to the extent that he was even unaware that the axe was being taken away by the police or as to upon whom the offence was committed, it would be unsafe to conclude that the accused had committed the act knowingly and that the act was done with an intention of causing death to the deceased. Accordingly, we are of the view that the act of the accused appellant in causing the death of the deceased would come within the purview of Section 304 Part II of the IPC. Thus the conviction of the appellant by the judgment and order dated 18.03.2016 of the learned Sessions Judge, Jorhat in Sessions Case No.13(J-J)/2015 is modified to the extent of it being a conviction under Section 304 Pt II IPC and convict him under Section 304 Part II of the IPC.

17. Accordingly, we also sentence the accused appellant to a rigorous imprisonment of 7(seven) years by retaining the fine of Rs.10,000/- in default thereof to undergo simple imprisonment for another period of one year as sentenced by the learned Sessions Judge, Jorhat.

18. Accordingly, the period of imprisonment already undergone by the accused appellant shall stand set off against the sentence of 7(seven) years.

19. Appeal stands partly allowed to the extent indicated hereinabove.

20. Before parting with the record, we appreciate the valuable service rendered by Ms. Meghali Barman, learned Amicus Curiae. Accordingly, it is directed that an amount of Rs.7,500/- as legal fees be paid to her by the High Court Legal Service Committee upon production of a copy of this judgment and order.

21. Send back the LCR.