
(2023) 08 GAU CK 0010
In the Gauhati High Court
Case No : Criminal Appeal No. 439 Of 2019

Biki Mandal @ Biki Mondal

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 05-08-2023

Acts Referred:

Indian Penal Code, 1860 — Section 307, 326

Citation : (2023) 08 GAU CK 0010

Hon'ble Judges : Parthivjyoti Saikia, J

Bench : Single Bench

Advocate : A. K. Gupta, B. Sarma

Final Decision : Dismissed

Judgement

1. Heard Mr. A.K. Gupta, learned counsel appearing for the appellant. Also heard Ms. B. Sarma, learned Amicus Curiae representing respondent no.2.

2. Challenge in this appeal is to the judgment and order dated 30.09.2019 passed by the learned Additional Sessions Judge No.2 (FTC), Tinsukia in Sessions Case No.146 (T)/2015. By the impugned judgment, the trial court has convicted the appellant under Sections 307 and 326 of the Indian Penal Code (IPC).

3. The prosecution story is that on 23.11.2014 at about 12 noon, the 24 years old Smti. Leena Rai was going to a Beauty Parlour at Azad Road, Doomdooma. On her way, she was stopped by the appellant who dealt dao blows on her head, back and other parts of the body with an intention to kill her. Leena Rai was immediately shifted to the local hospital and thereafter to a hospital at Dibrugarh for better treatment. The FIR was lodged by Biki Rai, the brother of Leena Rai narrating the aforesaid facts.

4. The doctor's report pertaining to the injuries sustained by Leena Rai is like this
—

Pre-stitched wound over right posterior parieto occipital area approx.

6.7 cm and 7-8 cm.

BP- 120/80

Pulse- 86 per minute

Chest- Bilateral clear

CVS- S1S2 clear

Type III B Proximo ulna fracture with UlnaR head fracture with multiple extensor cut injury with extensor tendon cut.

5. In order to prove the offences against the appellant, the prosecution side examined as many as 11 (eleven) witnesses including the police investigating officer.

6. On the basis of the evidence on record, the trial court arrived at the impugned finding.

7. I have carefully gone through the prosecution evidence.

8. The witness Leena Rai has stated in her evidence that the appellant first requested him to go with him and when she refused to go with him, he attacked her with the dao. She has stated that initially she was taken to Doomdooma Civil Hospital and thereafter to Assam Medical College & Hospital, Dibrugarh. According to Leena Rai, she was even taken to Sanjivani Nursing Home for specialised treatment.

9. In her cross-examination, she has stated that she did not know the people who resided near the place of occurrence.

10. The witness Biki Rai is the brother of the victim Leena Rai. After receiving the information about the occurrence, he rushed to Doomdooma Civil Hospital to see his sister and from her he came to know that it was the appellant who attached her with a dao.

11. In his cross-examination Biki Rai has stated that at the relevant time occurrence, he was attending his shop and at about 1 P.M., he came to know about the occurrence. According to Biki Rai, the distance between his shop and the place of occurrence is about 7 kms.

12. The witness Biman Barman has stated in his evidence that on the day of occurrence between 1 P.M. to 1.30 P.M. he was in his residence. At that time, he heard hue and cry out side of his house. Out of curiosity he came out of the house and saw that in front of the entrance gate of residence, a girl was lying in an injured state. According to Biman Barman, one Sunti arrived there and tied the head of the girl with a towel. Biman Barman has stated that the girl was immediately rushed to the Doomdooma FRU. Biman Barman further disclosed that he came to know from other people that the person who caused injuries to the girl had surrendered in a police station. Biman Barman has stated that some

time later, police arrived there and seized one dao and he put his signature in the seizure list.

13. In his cross-examination Biman Barman has stated that he had not seen the occurrence where the girl was attacked with a dao.

14. The witness Kumud Medhi has stated in his evidence that at the relevant time of occurrence while he was riding his motorcycle, he noticed a gathering of persons near his house and saw a girl with multiple bleeding injuries. Kumud Medhi has stated that he also noticed a person who was sitting at a distance of about 7-8 feet from the girl and somebody told this witness that the said person had caused the injuries to the girl. According to Kumud Medhi, he along with another person called Dinesh took that person to the police station in his motorcycle. Kumud Medhi disclosed that the said person told him that the said girl was having a love-affair with him from a long time.

15. During cross-examination, Kumud Medhi has stated that he never saw the occurrence where the girl was attacked with sharp weapon.

16. The witnesses Papori Chakravorty and Anjana Devi have stated in their evidence that they came out of their houses after hearing hue and cry outside and saw a girl in an injured state who was subsequently taken to the hospital. None of these witnesses had stated the occurrence.

17. The witness Hemanta Mahanta has stated in his evidence that at the relevant time of occurrence he was travelling in a motorcycle and when he reached the house of Bitu Baruah, he was that a girl was lying by the side of the road in an injured state and was bleeding. This witness saw that there was cut injury on the back side of the head of the girl. He immediately arranged one towel and tied the head of the girl with the towel. According to Hemanta Mahanta, some other ladies also came forward and tied other injuries of the girl with cloths.

18. Hemanta Mahanta has stated that the girl told him that one particular boy, who was sitting on the footpath at that time, had caused her those injuries. Hemanta Mahanta stated that he called one Ambulance and the girl was taken to the hospital.

19. Hemanta Mahanta has stated in his cross-examination that the suspected boy was detained by public.

20. The witness Nagen Lahkar has stated in his evidence that while he was present in his shop, he saw a boy attacking a girl with dao. He immediately came to the place of occurrence and saw a dao lying on the ground and the girl was sitting on the footpath. Nagen Lahkar witnessed several cut injuries upon the body of the girl. According to Nagen Lahkar the body who attacked the girl was still present there and told him that he was in love with the girl for a long time and she had betrayed him and that is the reason why he had attacked her with the dao. In his cross-examination, Nagen Lahkar has stated that he had not seen the boy assaulting the girl by his hands. Nagen Lahkar had disclosed that the dao

which was used by the appellant was about 1 feet long with a handle.

21. The witness Sunita Sah has stated in her evidence that on the day of occurrence she was with the victim Leena Rai as both have come together to a Beauty Parlour. Sunita Sah has stated that when they reached near Natya Mandir, Leena Rai stopped there and asked her to go the Beauty Parlour alone and accordingly, this witness proceeded to the Beauty Parlour alone leaving behind Leena Rai. According to Sunita Sah, about 10 minutes later, she heard hue and cry and heard that Leena Rai was assaulted by a person.

22. In her cross-examination she has stated that she never saw the occurrence.

23. The Investigating Officer Bhadra Kanta Gogoi spoke about the investigation.

24. Dr. Polash Jyoti Likhak spoke about the Medical Report.

25. I find that there are no discrepancies and contradictions in the evidence of the victim girl.

26. Regarding the evidentiary value of an injured witness, in *Shivalingappa Kallayanappa And ... vs State Of Karnataka* (AIR 1995 SC 254) the Hon,ble Supreme Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

27. In *Bhajan Singh Alias Harbhajan Singh and others v. State of Haryana*, reported in (2011) 7 SCC 421, the Hon,ble Supreme Court has held –

"The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide: *Abdul Sayeed v. State of Madhya Pradesh*, (2010) 10 SCC 259; *Kailas & Ors. v. State of Maharashtra*, (2011) 1 SCC 793; *Durbal v. State of Uttar Pradesh*, (2011) 2 SCC 676; and *State of U.P. v. Naresh & Ors.*, (2011) 4 SCC 324)."

28. The evidence of the victim is supported by the medical evidence as well as the evidence of other independent witnesses. Her evidence inspires confidence.

29. I am of the considered opinion that the learned trial court has correctly appreciated the prosecution evidence and arrived at a correct finding. The appeal is found to be devoid of merit and stands dismissed accordingly.

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