
(2013) 03 GAU CK 0080
In the Gauhati High Court
Case No : Criminal Appeal No. 261 of 2012

Dhrubajyoti Baruah @ Dhrubajit

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Citation : (2013) 3 GLD 57

Hon'ble Judges : Iqbal Ahmed Ansari, J; Anima Hazarika, J

Bench : Division Bench

Advocate : S.K. Medhi, for the Appellant; D. Das, Additional Public Prosecutor, Assam, for the Respondent

Judgement

Iqbal Ahmed Ansari, J.—This appeal is directed against the judgment and order, dated 15-10-2012, passed, in Sessions Case No. 50 (CH) of 2010, by the learned Sessions Judge, Tinsukia, convicting the accused-appellant, u/s 302, IPC and sentencing him, for his conviction u/s 302, IPC, to suffer imprisonment for life and pay a fine of Rs. 10,000/- and in default of payment of fine, suffer rigorous imprisonment for a period of six months and, for his conviction u/s 324, IPC, undergo simple imprisonment for three months. This is claimed to be a case of matricide, wherein the accused-appellant, namely, Dhrubajyoti Baruah @ Dhrubajit, stands convicted for having murdered his mother, Hemaprabha Baruah, and also for having voluntarily caused hurt, by means of dao, to his wife Anita Baruah.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be described as under:

On 01-10-2009, at about 11.00 a.m., the accused gave multiple blows, by means of a dao, on his mother, Hemaprabha Baruah, causing her death and also dealt blows by the said dao on his wife, namely, Anita Baruah, at his own house, where he used to live with his wife, his mother and his children. On being informed, over telephone, about the said occurrence, Dulal Gogoi (P.W. 3), father-

in-law of the accused, rushed to the house of the accused, which was about 7 (seven) kilometers from ferry ghat, at Dholla, where P.W. 3 had been attending to his duties. On reaching the house of the accused, P.W. 3 found Hemaprabha Baruah lying dead on a bed and though many people had gathered at the house of the accused, the accused was not present there. Upon a query made, in this regard, P.W. 3 came to learn that Anita had already been taken in injured condition to the hospital. Having been told by the people, who has assembled at the house of the accused, that it was the accused, who had hacked his mother to death, P.W. 3 went to Dholla Police Station and found there the accused inside the lock up. On being asked by him (P.W. 3), the accused told him that he was not aware as to what he had done and that he had cut planted tree, whereupon P.W. 3 lodged a written Ejahar at the said police station alleging, inter alia, that the accused had hacked his mother to death and grievously injured his wife by a sharp-cutting weapon. Treating the said Ejahar as First Information Report (in short, FIR"), Dholla Police Station Case No. 37 of 2009, under Sections 302/324, IPC, was registered against the accused. During the course of investigation, police visited the house of the accused, held inquest over the said dead body, got the said dead body subjected to post mortem examination, recovered the dao (M.Ext.4), from the nearby jungle, alleging to be the weapon of offence and, on completion of investigation, laid a charge-sheet, under Sections 302 and 324, IPC, against the accused.

3. At the trial, when charges under Sections 302 and 324, IPC were framed against the accused, the accused pleaded not guilty thereto.

4. In support of their case, prosecution examined altogether 7 (seven) witnesses and all these none official witnesses turned hostile and were subjected to cross-examination by both prosecution as well as defence. The accused was, then, examined u/s 313, Cr.P.C. and in his examination aforementioned, he denied that he had committed the offences, which were alleged to have been committed by him, the case of the defence being that of denial. No evidence was adduced by the defence.

5. Having, however, found the accused guilty of the offences charged with, the learned trial Court convicted him accordingly and passed sentences against him as mentioned above. Aggrieved by his conviction and the sentences passed against him, the convicted person has preferred this appeal.

6. We have heard Mr. S.K. Medhi, learned counsel, and Mr. D. Das, learned Additional Public Prosecutor, Assam.

7. While considering the present appeal, let us, first, take into account the evidence of the doctor (P.W. 1), who had, admittedly, performed post mortem examination on the dead body of Hemaprabha Baruah, mother of the accused-appellant. His findings were as follows:

INJURIES:

1. One chopped wound at the level of upper border of cervical 6th vertebra of neck involving all the structures of neck sparing only cutaneous attachment on the right side of the neck, transversely placed.
2. One incised looking wound extending from left angle of mandible to 5 cm below the left mastoid process, transversely placed of size 12 cm x 1 cm x muscle cut.
3. One incised looking wound of size 10 cm x 1 cm x muscle cut present over the left shoulder joint.

Cranium and Spinal Canal: Scalp, skull and vertebrae were healthy. Membrane was pale. Brain was pale.

Spinal Cord; Complete section at the level of upper border of cervical 6th vertebra.

Thorax: Both lungs were pale.

Heart was empty.

Abdomen: Healthy.

Stomach contained partially digested food materials mixed with 80 ml, of fluid.

Small intestine contained digested food materials and gases.

Large intestine contained fecal matter and gases.

Fracture: Not detected.

8. In the opinion of the doctor (P.W. 1), the death was instantaneous as a result of the injuries sustained by the said deceased, the injuries being ante-mortem homicidal in nature and the same having been caused by sharp-cutting object. It is also in the evidence of the doctor (P.W. 1) that injury No. 1 was, in itself, sufficient to cause death of a person in the ordinary course.

9. Though put to cross-examination, nothing, in particular, could be elicited by the defence to show that the doctor's findings and/or his opinion with regard to the nature of injuries, cause of death as well as the nature of weapon used in the case, were inherently incorrect or improbable. We, too, do not notice anything inherently incorrect and improbable in the findings of the doctor or in the opinion given by him.

10. We have, therefore, no hesitation in arriving at the conclusion that Hemaprabha Baruah met with homicidal death, her death having been caused by sharp-cutting weapon. We have also no hesitation in concluding that her death was instantaneous as a result of multiple injuries sustained by her.

11. Bearing in mind what have been discussed above, we come to the evidence of the doctor (P.W. 2), who had, admittedly, examined, on 01-10-2009, Anita Baruah, wife of the accused-appellant. The findings of P.W. 2 are as under:

INJURIES:

1. One cut injuries measuring 4 cm x 2 cm on right shoulder.
2. One abrasion on right side of neck.

In my opinion, injury No. 1 was a simple cut injury caused by sharp weapon and injury No. 2 was also a simple injury, caused by blunt object.

Ext. 2 is my report. Ext. 2(1) is my signature.

12. In the cross examination, P.W. 2 has ruled out the possibility of injury No. 1 having been caused by fall on a sharp-edged weapon meaning thereby that Anita had sustained injuries on being assaulted by someone by means of dao or a sharp-cutting weapon.

13. Bearing in mind, thus, the fact that Hemaprabha Baruah met with homicidal death on being assaulted by means of a sharp- cutting weapon, such as, dao and her daughter-in-law, Anita, had sustained injuries, as described above, let us come straightaway to the evidence of P.W. 3.

14. From the evidence of P.W. 3, what transpires is that, on 01-10-2009, at about 11.30 a.m., while he was attending to his duties at ferry ghat, at Dholla, he received, over telephone, information that an incident of cutting had taken place at the house of his son-in-law, i.e., the accused-appellant. The evidence of P.W. 3 shows that he, on receiving the information, reached the place of occurrence, within about 12/15 minutes, and found Hemaprabha Baruah lying dead on a bed with many people having assembled at the house of the accused-appellant, but the accused-appellant was himself not there and, upon making query, he learned that his daughter, Anita, who had sustained injuries, had been taken to hospital.

15. From the evidence of P.W. 3, it further transpires that on having learnt from the people, who had assembled there, that the accused had hacked his mother to death and the accused had been taken to the police station, he (P.W. 3) went to the police station and, on having found the accused in the lock up, at the police station, he asked the accused and the accused responded by saying that he was not aware as to what he had done and that he had cut a planted tree and it was, thereafter, that P.W. 1 lodged a written Ejahar (Ext.3) in accordance with the information, which he had received from the people, who had gathered at the house of the accused.

16. From the evidence of P.W. 3, what becomes abundantly clear is that though he had lodged the FIR, he was not an eye-witness to the occurrence, he had no personal knowledge as to who had caused Hemaprabha's death or who had injured Anita and his allegations, in the FIR, that his son-in-law hacked his mother to death and grievously injured his wife, were based on the information, which he had received from the people, who had gathered at the place of occurrence. Thus, the contents of the FIR are ex facie without personal

knowledge of the informant.

17. Though P.W. 3 was declared hostile by the prosecution and put to cross-examination, nothing was elicited from his cross-examination or from the evidence of the investigating officer to show that P.W. 3, at any point of time, had claimed/stated to be a witness to the assault by the accused-appellant on the latter's mother and wife nor had P.W. 3 claimed, even in his previous statement before the police, that he had seen the accused, at his house, with any weapon.

18. From the evidence of P.W. 3, we also notice that on being asked by him (P.W. 3) in the lock up, the accused told him that he was not aware as to what he had done and that he had cut a planted tree. This statement, attributed to the accused-appellant, does not necessarily mean that the accused had admitted to have killed his mother or injured his wife. It is also not discernible from the evidence of P.W. 3 as to what query he had made from the accused; but from the reply of the accused, it can be safely gathered that the accused denied that he was aware of what he had done and, according to him, he had cut a planted tree, which also did not necessarily mean that, while admitting to have cut the planted tree, he shall be taken to have admitted to have hacked his mother to death or caused injuries on the person of his wife.

19. By no means, therefore, the evidence of P.W. 3 can be treated to have proved that the accused-appellant had admitted to have killed his mother and/or caused hurt to his wife.

20. In the light of the fact that the evidence of P.W. 3 (i.e., the informant of this case) does not prove the prosecution's case that it was the accused-appellant, who had caused the death of his mother and injured his wife, we turn to the evidence of P.W. 4, whose evidence, we notice, does not advance the case of the prosecution against the accused-appellant inasmuch as this witness, who is the wife of the accused, has deposed that at the time of the occurrence, she used to live in her matrimonial house with her husband (i.e., the accused-appellant), her mother-in-law, Hemaprabha, and their two sons, one being seven years old son, and the other being five-days old infant.

21. Describing the occurrence, P.W. 4 has deposed that, on the day of the occurrence, at about 11-00 a.m., she, having had her meals, was lying on the bed with her baby and, after giving her meal, her husband went out somewhere, but her mother-in-law was sleeping without taking meal and, at about 11-30 A.M., when she went to her mother-in-law in order to make her mother-in-law take meal, she saw her mother-in-law lying, on her bed, with a cut injury on her neck and, out of fear, she did not look further, she came out, trembling, in a run and, in the process of coming out, she stumbled and hit against the gate of their house, the gate having been made of C.I. sheet and sustained injuries on her arm. It is also in the evidence of P.W. 4 that she, on being injured, cried out and sat down there itself, whereupon many people assembled there, someone

informed the police, police came and, on being asked by the police, she was taken by someone to the hospital, where she was kept for a day and treated.

22. It is also in the evidence of P.W. 4 that, on the day of the occurrence, after having his meal, her husband had gone out and, since then, she had not seen him and that she could see her husband, in the jail, after two months and that, while staying in the hospital, she came to know that her mother-in-law had died. P.W. 4 has further deposed that, at the time of the occurrence, her 7 years old son had gone out to play.

23. In her cross-examination, she (P.W. 4) denied to have made statement before the police to the effect that her husband had hacked her mother-in-law. In fact, in her cross-examination, she denied to have stated before the police that on 01.10.2009 (i.e., the day of the occurrence), at around 11-00 A.M., her husband had asked her and his mother to go to sleep after having meal and, after sometime, taking a dao in hand, her husband had got violent and asked why the spadix of a banana tree had been cut and when she had tried to snatch the dao from him, her husband charged at her and cut her in her hand, that she cried and ran to the house of one Kushal Das, which was nearby, that after sometime, police came and, when she went to her house along with the police to bring her baby, she saw that her mother- in-law, Hemaprabha Baruah, had been hacked to death while sleeping on the bed that she (P.W. 4) saw her husband standing on the Courtyard trembling and that police took her husband away.

24. What is, however, of immense importance to note is that the previous statement of P.W. 4, made before the police, is not substantive evidence; her substantive evidence is the evidence, which she gave in the Court and her previous statement can be used for the purpose of contradiction and though her evidence would not be washed off the record merely on the ground that she was declared hostile, the fact remains that the previous statement of a witness, such as P.W. 4, is not of substantive nature and there is no guarantee that what the witness had stated before the police, during the course of investigation, was the truthful version of the occurrence.

25. Situated thus, relying on the said previous statement of P.W. 4, it could not have been inferred, and ought not to have been inferred, that her evidence proved that her husband was the one, who had killed his mother and also injured her (P.W. 4).

26. Though P.W. 2 (doctor) has ruled out that the injuries, which had been sustained by Anita (P.W. 4), could have been caused by fall, the opinion, so given, is merely advisory in nature and, if the evidence of P.W. 4 shows that the doctor's opinion, given in this regard, is not correct, it would be the duty of the Court to discard the opinion of the doctor.

27. In the light of the proposition of law, indicated above, when we revert to the evidence of P.W. 4 and consider her evidence in the light of the injuries, which P.W. 2 (doctor) had found on her person, we have no hesitation in holding that

the injuries, which P.W. 4 was found to have sustained, could have been caused by fall inasmuch as there was a cut injury on the right shoulder and an abrasion on the right side of the neck, which P.W. 4 asserted to have been caused, when she stumbled upon the gate of their house, which was made of C.I. sheet, and fell down. At any rate, the evidence of P.W. 4 does not prove, if we may reiterate, that it was the accused-appellant, who had killed his mother and also injured his wife.

28. As far as the evidence of P.W. 5 is concerned, this witness, too, has not supported the case of the prosecution inasmuch as the evidence of P.W. 5 is that police recovered a dao from the jungle, located near the house of the accused, and obtained his signature and signatures of others on a piece of paper, which is Exhibit 4(1), Material Exhibit 4 being the said dao. In his cross-examination by the defence, P.W. 5 has clarified that he did not see wherefrom the police recovered the dao.

29. Similarly, though P.W. 6 was also examined by the prosecution as a witness to the seizure of the said dao, even the evidence of P.W. 6 is same as that of P.W. 5 inasmuch as the evidence of P.W. 6 is that the police showed him a dao and told him that it had been recovered from the jungle and that it was the dao with which the hacking of the woman had taken place and, accordingly, the police obtained his signature on the seizure list. Even P.W. 6, in his cross-examination by the defence, has stated that he had not seen from where the said dao was brought by the police.

30. Situated thus, it is clear that the evidence of P.W. 5 and P.W. 6 do not prove that they were witnesses to the recovery of the said dao. This apart, their evidence do not show that the said dao was the weapon of offence. In this regard, one cannot avoid noticing that though the Investigating Officer (P.W. 7) has claimed that, on conducting a search near the place of occurrence, he found a dao and seized the same, the fact remains that the said dao was not put through serological test nor was the said dao examined for ascertaining if the same had any finger impression. In fact, there is not even a particular of evidence on record to show that the said dao (Material Exhibit. 4) was the weapon of offence.

31. What surfaces from the above discussion is that the evidence on record was wholly inadequate to hold that it was the accused-appellant, who had assaulted his wife (P.W. 4), injured her and also caused the death of his mother, Hemaprabha. In such circumstance, the accused-appellant ought not to have been held guilty of the charges, framed against him, under Sections 302 and 324, IPC, and he ought to have, therefore, been acquitted by according, at least, benefit of doubt.

32. Because of what have been discussed and pointed out above, we allow this appeal. We set aside the impugned conviction of the accused-appellant and the sentence passed against him by the judgement and order under appeal and we

acquit him, under benefit of doubt, of the offences, which he stands convicted of.

33. Let the accused-appellant be set at liberty, forthwith, unless he is required to be detained in connection with any other case. Send back the LCR.