

(2022) 06 GAU CK 0017
In the Gauhati High Court
Case No : Criminal Appeal No. 213 Of 2019

Dipjyoti Nath

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 14-06-2022

Acts Referred:

Indian Penal Code, 1860 — Section 302
Code Of Criminal Procedure, 1973 — Section 164, 313
Evidence Act, 1872 — Section 25, 26

Citation : (2022) 06 GAU CK 0017

Hon'ble Judges : Suman Shyam, J; Malasri Nandi, J

Bench : Division Bench

Advocate : N. Mahajan, S. Jahan

Final Decision : Allowed

Judgement

Suman Shyam, J

1. Heard Mr. N. Mahajan, learned counsel appearing for the appellant. We have also heard Ms. S. Jahan, learned APP, Assam, who has appeared on behalf of the State of Assam.

2. Assailing the judgement dated 11/02/2019 passed by the Additional Sessions Judge (FTC), Darrang, Mangaldoi, in connection with Session Case No. 149 (DM)/2016 whereby, the sole appellant was convicted under Section 302 of the Indian Penal Code (IPC) for committing the murder of her mother-in-law Moheswari Nath and sentenced to undergo rigorous imprisonment for life and also to pay fine of Rs. 5,000/-, in default, to undergo rigorous imprisonment for 3(three) months, the present appeal has been preferred.

3. On 14/07/2015, the husband of the appellant i.e. the son of the deceased, viz. Sri Uday Kumar Nath had lodged an ejahar with the Officer-in-Charge, Sipajhar Police Station, Darrang (Assam), informing that at around 8.00 a.m. on that day, his wife (appellant) had a quarrel with his mother (deceased) over some

domestic issues and in course of the quarrel, she got enraged and killed his mother by hacking her neck. His mother was lying dead in the house.

4. On receipt of the ejahar dated 14/07/2015, Sipajhar P.S. case No. 456/2015 was registered under section 302 of the IPC and the matter was entrusted to Sub-Inspector (SI) Khitish Deka to carry out the investigation. On completion of investigation, the I.O. had submitted charge sheet against the appellant under section 302 of the IPC. Based on the same, charge was framed against the appellant under section 302 of the IPC. Since the appellant had pleaded innocence, she was subjected to trial by the court of Additional Sessions Judge (FTC), Darrang, Mangaldoi.

5. There is no eye witness to the occurrence and the prosecution case is entirely based on circumstantial evidence. In order to prove the charge, the prosecution had examined as many as 8 (eight) witnesses. The case of the accused was one of total denial. However, the defence side did not adduce any evidence.

6. Upon completion of trial, the learned trial Court was of the view that the charge brought against the appellant under section 302 of the IPC was proved beyond reasonable doubt on the basis of circumstantial evidence. The learned trial Court has also held that the deceased was last seen alive with the appellant at her house on 14/07/2015, and therefore, based on the "last seen together" theory, the appellant was convicted under section 302 of the IPC.

7. Assailing the impugned judgement, Mr. Mahajan has argued that the theory of "last seen together" is a weak piece of evidence and in the absence of any corroborating evidence available on record, the learned trial Court had committed an error in holding that the charge brought against the appellant has been proved beyond reasonable doubt. It is also the submission of Mr. Mahajan that the prosecution has failed to establish each link in the chain of circumstances so as to prove the charge brought against his client beyond reasonable doubt. Contending that the failure on the part of the I.O. to link the seized 'dao' with the accused is a fatal defect in the prosecution case, the benefit of which must go in favour of the accused/appellant. In support of his above arguments, Mr. Mahajan has relied on the decision rendered in the case of Majid Ali Vs. State of Assam reported in (2022) 1 GLT 99 and also the decision of the Hon'ble Supreme Court rendered in the case of Jaswant Gir Vs. State of Punjab reported in (2005) 12 SCC 438.

8. Ms. S. Jahan, learned APP, Assam, on the other hand, has argued that the incident took place inside the house of the informant wherein, he was living with his mother (deceased), wife (appellant) and son. The dead body, with fatal injuries, was also found inside the house on the day of the occurrence and there is no proper explanation from the accused person as to the circumstances under which the deceased had suffered such grievous injuries leading to her death. On such count, submits Ms. Jahan, it cannot be said that the prosecution has failed to establish the charge brought against the appellant beyond reasonable doubt.

9. As noted above, the informant (Uday) in this case is the son of the deceased. He was examined as PW-1. This witness has deposed to the effect that the deceased Moheswari Nath was his mother. On the day of the incident, he had gone to the market and when he returned home, he had seen a large gathering of people in his house. His mother was lying in a pool of blood in the courtyard. The people present in the house had informed him that his wife had killed his mother with a 'dao'. PW-1 has further deposed that at the time of the incident, his mother was with his wife and son and she was cremated on the day of the incident itself. Later on, Police came, interrogated the people and also seized the SIM card of his wife by seizure list which he had signed. PW-1 has confirmed that Ext-1 was the FIR lodged by him which contains his signature as Ext. 1(1). During cross examination, PW-1 has replied that he was not present at home at the time of the incident nor did he witness the same. He had just heard about it. He has reiterated that at the time of the incident, his mother, his son and he were residing together. He has also stated that there was no dispute between his mother and his wife and they were in good terms. He had gone to the market at about 6-30/7 a.m. At the time of the incident, his wife had served tea to his mother who was preparing to pluck coconuts. This witness has further stated that he did not know as to who wrote the ejahar but he had put his signature therein when he was asked to do. The content of the ejahar was not read over to him.

10. Sri Munindra Kalita is known to the accused and was a neighbour and also the Secretary of the VDP. He was examined as PW-2. This witness has stated that the incident took place on 14/07/2015. The 2nd Officer of the Police Station informed him over phone that one woman by the name of Moheswari Nath has been hacked by her daughter-in-law and he was asked to enquire whether the woman had died or not. At that time, he was in his house doing some electrical work. He, along with his neighbours i.e. Banti Bezbaruah, Joon Sarma, Kahgendra Kalita and some other women went to the house of the accused and found that all the doors were shut. At that time, it was about 10 a.m. They called out to find out if there was anybody inside but there was no response. So they peeped through a hole and saw that Moheswari Nath was lying in a chair and also saw marks of injuries in her throat. He had immediately called the Police who had arrived within 20 minutes. One reporter by the name Hemanta Kalita had clicked photographs. At that time, Uday (PW-1) was not at home. Police had brought Uday and opened the door which was bolted from outside. He had seen the injured victim lying on a chair in an inclined position, soiled with blood and a 'dao' was lying beside her. This witness has also stated that the Police seized the 'dao' by Ext. 3 seizure list which contains his signature. According to the PW-2, the relationship between the accused and her mother-in-law was a congenial one and an earlier dispute between them over some issue, was resolved in a village 'bichar'.

11. Sri Bhubaneswar Nath (PW-3) has merely deposed that he has put his signature on a document on the following day of the incident when he went to

the Sipajhar Police Station but he was aware that a quarrel took place.

12. PW-4 Sri Kulen Nath is the uncle of the informant. PW-4 has deposed that quarrels used to take place frequently between the informant and the appellant on the ground that the deceased used to live with them. On the day of the incident, deceased Moheswari (his sister-in-law) was in her father's house till 11-30 p.m. and when she was asked to eat rice, she declined as there was a quarrel. At 11-30 p.m., his second elder brother Keshab Nath had escorted her to the house at around 6/5-30 a.m. His niece Mitali Nath had informed that his sister-in-law (deceased) has been hacked. Immediately, he went to the house of the deceased. In the meantime, many people and the Police had also reached there. Entering the house, he had seen his sister-in-law Moheswari Nath sitting on a plastic chair in her bed room with her neck almost severed but for a stretch of skin with a cut on one side of the neck. According to this witness, there was blood on the floor and there was black tea on a bowl with a little bit of tea spilled on the floor. At that time, the accused was not inside the house. PW-4 has also stated that the dao was seized by the Police vide Ext. 3 which contains his signature Ext. 3(2) and M.Ext. A is the 'dao' found in the place of occurrence. According to this witness, the informant Uday Kumar Nath arrived at the place when the Police was taking away the dead body. He had seen blood in the shopping bag too. PW-4 has also stated that in his opinion, both the informant and the accused were involved in the incident.

13. Sri Pinku Nath (PW-5) is the brother-in-law of the accused and the cousin of the informant. He has also deposed that on getting the information about the incident, he had gone to the place of occurrence and saw his 'Barma' (Aunt) lying dead on a chair with cut injury in her neck which was almost severed from the head. When he reached the place of occurrence, it was 8-30 a.m. and at that time, the informant and his sister-in-law (deceased) were not at home. Uday was in the market and Police took him away at around 11 a.m. and kept him in the Police Station. He had heard that on reaching the Police Station, his sister-in-law i.e. the accused had confessed that she had cut his 'Barma'.

14. Sri Keshab Nath, who is the Uncle of the informant, was examined as PW-6. This witness has stated that the incident took place at around 8 a.m. At that time, he was in the Sipajhar market. After the shopping, when he was going home, he had seen the accused in front of Sipajhar Police Station and on being asked, she told him that she would go to the Police Station. On the way home, he had heard that the accused had cut the deceased Moheswari. He had entered the house of Moheswari and saw her lying on a chair with her neck almost severed but for a stretch of skin. There was blood in her clothes. One 'dao' was lying near the dead body. Police came there as soon as he had reached the place and seized a mobile Phone vide seizure list (Ext-2), which contains his signature Ext. 2(2). Police had recorded his statement and the dead body of Moheswari was sent for post-mortem examination. After the post-mortem examination, the dead body was handed over to the members of the family. In his cross

examination, PW-6 has clarified that he did not witness the incident nor did he know where and how the incident took place. He also did not know what had actually happened and who had delivered the 'dao' and the mobile phone to the Police. Police had asked him nothing.

15. Dr. Nani Gopal Saharia was the Senior Medical and Health Officer on duty at the Mangaldoi Civil Hospital on 14/07/2015 when the dead body of Moheswari Nath was brought there for conducting post-mortem examination. Dr. Saharia was examined as PW-7. He has proved the post-mortem report (Ext-4) by identifying his signature therein. According to PW-7, the following injuries were found in the dead body:-

"On examination the following wounds were found :-

(1) About 70% deep cut on the neck (left side). All the muscles, vessels and other centralizing structure were found cut. Only a small part (about 30% of the neck (right) side was found intact. The injuries are sharpened margins.

(2) One injury measuring 5 inches x 2 inches sized deep lacerated injury over the sterna region of the chest. Fracture of the sternum is present. The shape of the wound is horizontally elliptical.

(3) Fracture of the cervical vertebra is present at the region of the cut.

(4) Laceration of the right part of the liver is present, size – 2 inches x 1 inch." The doctor has opined that the cause of death was due to shock and hemorrhage, as a result of injuries sustained. Cross examination of the doctor was declined by the defence side.

16. Sri Khitish Deka (SI) had conducted investigation in connection with Sipajhar PS Case No. 456/2015 and on completion of investigation had also submitted the charge sheet. He was examined as PW-8. This witness has deposed that on 14/07/2015, he was on duty as the S.I. of Sipajhar Police Station. On receipt of an ejahar from Uday Kumar Nath, the Officer-in-Charge had registered a case under section 302 of the IPC and entrusted him with the task of carrying out investigation. Accordingly, he had interrogated the informant at the Police Station and thereafter, went to the place of occurrence along with his staff. Arriving at the place of occurrence, he had examined the witnesses. The dead body was found on a chair in a slanting position, inside the house and the neck was almost severed but for a stretch of skin. He had found a 'dao' lying there, which was seized in presence of witnesses. PW-8 has further deposed that he had held inquest on the dead body and sent it to Mangaldoi Civil Hospital for post-mortem examination. According to the PW-8, the accused had herself appeared in the Police Station and confessed her guilt. As such, he had recorded the statement of the accused in presence of witnesses and sent the 'dao' for forensic test. Ext. 8 was the confessional statement of the accused recorded by him in presence of witnesses. Upon completion of investigation and on finding sufficient incriminating materials against the accused, he had submitted charge sheet.

17. During his cross examination, PW-8 has stated that the ejahar was written by Mohori (petition writer) Morichika, who works at the Sipajhar Police Station and he did not examine the informant. Upon receipt of the ejahar, the Officer-in-Charge had registered a case at 9-30 a.m. and he went to the place of occurrence at 9-35 a.m. He also did not examine or record the statement of people who lived in the neighbourhood of the informant. PW-8 has also stated that he had made a prayer before the Court to record the statement of the accused under section 164 Cr.P.C. but the statement was not recorded.

18. While recording her statement under Section 313 Cr.P.C., the accused/appellant while denying all the incriminating materials brought against her, has stated that on the day of the incident, she was not present in the house of her husband but she was at her paternal home and hearing the news that her mother-in-law was killed, she went to the Police Station to enquire about it.

19. On a careful scrutiny of the evidence brought on record, we have noticed the following contradictions in the prosecution story. In the ejahar (Ext-1), the informant has stated that at around 8 a.m. of 14/07/2015, his wife has hacked his mother with a dao who was lying dead in his house. However, from the evidence of PW-1, it appears that he had left for the market before the incident and it was only on his return back home that he came to know about the incident from the people present there. According to the I.O.(PW-8) he had gone to the place of occurrence after receipt of the ejahar from the PW-1 and after a case was registered under section 302 IPC. This witness has also stated that the FIR was received at around 9-30 am and he had gone to the place of occurrence at 9-35 a.m. If that be so, the informant would have to return home from the market before that and heard about the incident from the people gathered there. Only then he could have left for the Sipajhar Police Station. However, according to the PW-4, the informant PW-1 had arrived at the place of occurrence when the dead body was being taken away by the Police. PW-2 on the other hand has stated that Police had brought Uday(PW-1) along with them and had opened the door which was bolted from inside. From the testimony of these witnesses it is evident that the PW-1 came to the place of occurrence along with the police. If that be so, the PW-1 must have returned home from the market, learnt about the incident from the people gathered there and then left for the Police Station to lodge the FIR. But the evidence on record does not indicate so. Although a large gathering was there in the place of occurrence, none of them had testified that they had seen the PW-1 at the place of occurrence after the incident.

20. PW-2, who is the VDP Secretary, has also stated that an Officer from the Police Station had informed him over phone that the deceased has been hacked by her daughter-in-law and asked him to enquire whether she was dead or alive. From the testimony of PW-2 it appears that on receipt of information about the incident, Police had called up the PW-2 so as to verify whether the incident had actually taken place or not. However, the IO (PW-8) did not say so in his deposition. It is also not clear from the evidence brought on record if the Police

had received the information about the incident before the FIR had been lodged prompting them to call up the PW-2.

21. PW-4 has stated that at around 6/6-30 a.m. on the day of the incident, his niece Mitali Nath had informed that his sister-in-law (deceased) has been hacked. Immediately, he went to the house of the deceased. In the meantime, people had gathered on the road and Police had also reached there. Entering the house along with the Police, he had seen his sister-in-law Moheswari Nath sitting on a plastic chair with her neck almost severed. From the evidence of PW-4, what transpires is that he had learnt about the incident at around 6-30 a.m. and soon thereafter, he had reached the place of occurrence and saw that Police was already present there. However, as has been noted here-in above, according to the PW-8, he had started for the place of occurrence after 9-35 a.m. and also after the informant Uday had lodged the ejahar.

22. PW-4 has also stated that he thinks that both the informant and the accused are involved in the incident. Such evidence coming from the prosecution witnesses, in our opinion, would raise a serious doubt as to the identity of the real culprit and would also cause a dent in the prosecution story. In the above context this court cannot also be oblivious of the evidence adduced by the PW-4, who is the Uncle of the informant, who has deposed that he had seen blood in the shopping bag of the informant. If the informant had straightway gone to the Police Station, then, how could there be blood in the shopping bag carried by him.

23. It would also be noteworthy herein that PW-6 had seen the appellant near Sipajhar market and she had informed him that she would be going to the Police Station but according to the IO (PW-8), it is the informant who had first reached the Police Station. The question that would, therefore, naturally arise is as to how did the informant come to know about the incident prior to returning home, so as to lodge an FIR at the Police Station at around 9-30 a.m. on the date of the incident. The aforesaid missing links, in our opinion, raises a serious doubt as to the veracity of the prosecution story and impels us to hold that the prosecution has failed to prove the charge brought against the appellant/ accused beyond reasonable doubt.

24. We also find from the materials brought on record that the IO had seized the 'dao' and sent it to the FSL but the report of the FSL has not been exhibited. There is also no evidence to show that the finger print of the appellant was found in the seized dao.

25. Law is firmly settled by a long line of judicial pronouncement that "last seen together" circumstance is a weak piece of evidence and in the absence of corroborating materials, it would be unsafe to base a conviction for murder only on 'last seen together' circumstances. It is no doubt correct that the PW-1 has deposed that when he had left for the market, his mother was at home with his wife and to that extent, it may also be correct to say that the prosecution has adduced evidence to establish the "last seen together" circumstances against the

appellant. However, in the decision of the Supreme Court rendered in the case of Jaswant Gir (Supra), relied upon by Mr. Mahajan, it has been held that mere correctness of the "last seen" version does not lead to the irresistible conclusion that it is the appellant who had killed the deceased although it may rise a grave suspicion about the involvement of the appellant. Rather, we are of the opinion that the evidence on record is insufficient to hold that the charge brought against the appellant/ accused of committing the murder of the deceased i.e. her mother-in-law has been properly established although, it appears to us that in all probability, the victim has been killed by the appellant with or without the assistance of any third party including the informant.

26. There is yet another significant aspect of the matter which deserves mention herein. According to the evidence adduced by the informant, when he had left for the market in the morning of the day of the occurrence, his wife and son were at home with his mother. PW-6 has stated that he had seen the appellant near the Sipajhar Police Station about an hour after the incident but this witness has not mentioned about the son of the informant. The son was also not found inside the house when the dead body was detected and none of the witnesses appear to have seen the minor son of the informant. From the above, it is apparent that the son of the informant/ appellant, who was at home at the time of the incident, neither went to the market with the informant nor was he at home nor did he accompany his mother (appellant) to the Sipajhar Police Station. There is not even an iota of evidence to indicate as to where the son had gone after the incident. Although whereabouts of the minor son of the informant is not the central issue in this case, yet, having regard to the facts and circumstances of this case, the presence of the son was a relevant fact and therefore, the prosecution ought to have adduced some evidence so as to throw light on that.

27. Viewed in the context of the above observations and on a close reading of the evidence available on record, we find force in the submission of Mr. Mahajan that there are certain missing links in the chain of circumstances sought to be proved by the prosecution and the true story does not appear to have been either investigated by the IO or established by the prosecution by leading evidence. The prosecution case seems to be largely based on the alleged confession of the appellant (Ext- 8) made in the Police Station during the course of investigation, which would obviously not be admissible in evidence, in view of the provisions of Sections 25 and 26 of the Indian Evidence Act, 1872. The evidence available on record, in our view, does not establish the links in the chain of circumstances so as to prove the charge brought against the appellant under section 302 of the IPC beyond reasonable doubt. Consequently, we are of the opinion that the impugned judgement dated 11/02/2019 is unsustainable in the eye of law. The same is accordingly set aside. The appellant is granted acquittal by giving her the benefit of doubt.

28. We are informed that since the day of the impugned judgement, the appellant is in jail. As such, we direct that the appellant be forthwith released

from the jail unless her presence is required in connection with any other case.
The appeal stands allowed.
Send back the LCR.