
(2016) 07 GAU CK 0041
In the Gauhati High Court
Case No : Crl. A (J) 68 of 2013

Ganesh Kalita @ Dangarbhai

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 18-07-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 447

Citation : (2016) 5 GauLJ 1 : (2016) 6 GauLR 673 : (2016) 4 GauLT 69

Hon'ble Judges : Mr. Ajit Singh, C.J. and Mr. Suman Shyam, J.

Bench : Division Bench

Advocate : Mr. K. Goswami, Amicus Curiae, for the Appellant; Mr. D. Das, Addl. PP, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Suman Shyam, J.(Oral)—The sole appellant Ganesh Kalita has been convicted under Section 302 of the Indian Penal Code (for short IPC) for committing murder of the deceased Jogen Gogoi and has been sentenced to suffer imprisonment for life and pay a fine of Rs. 2,000/- with default stipulation.

2. The prosecution case in brief is that on 03/09/2011 at about 3.30 p.m., the appellant come running from his own bicycle shop to the bicycle shop of Jogen Gogoi with a hammer in his hand and assaulted Jogen Gogoi as a result of which he suffered grievous injuries in his left eye which led to his death.

3. Shri Mukunda Gogoi, the son of the deceased, had lodged an Ejahar with Kamarbandha Police Out Post in the district of Golaghat on 03/09/2011 reporting the aforesaid incident, on the basis of which a case No. 597 dated 04/09/2011 was registered by the Police under Section 447/302 of the IPC. The Officer-in-charge of the Kamarbandha Police Out Post has investigated the case and thereafter submitted charge sheet against the appellant who was eventually convicted by the learned Trial Court by the impugned judgement and order dated 15/05/2013 passed in sessions case No. 166/2011.

4. There are as many as 4 (four) eye witnesses to the incident. Smt. Sumitra Gogoi (PW-2) had deposed before the trial court that on 03/09/2011 at about 3.30 p.m. while she was waiting for the bus in Bokolai Tiniali, she saw the appellant taking a hammer from his own bicycle store and run towards the deceased person's bicycle store, where after the appellant had assaulted the deceased just above his left eye with the hammer from behind. Smt. Gogoi had further deposed that on being hit by the hammer, Jogen Gogoi fell down on the ground writhing in pain. Seeing the incident, she immediately rang up the Police Station. The said witness had further deposed that the appellant threw away the hammer in his bicycle store and left the place after the incident. Later on, the police recovered the hammer from the bicycle store of the appellant through Ext-2 seizure list which was signed by the PW-2 as a witness.

5. Shri Rana Borah (PW-3), who was an employee working in the bicycle store of the deceased Jogen Gogoi, had categorically deposed that on 03/09/2011 at about 3.30 p.m., the appellant Ganesh Kalita come running from his shop with an iron hammer in his hand and thereafter assaulted Jogen Gogoi on his left eyebrow, as a result of which Jogen Gogoi fell down and died after 10-15 minutes later. The witness had also deposed that the appellant threw away the hammer towards his store and went away riding his own bicycle. The hammer could be recovered by the Police with the help of the eye witnesses. PW-3 had also identified his signature Ext. 2(2) in the seizure list (Ext.2) by means of which the police had seized the hammer. Similarly, Shri Patha Gogoi (PW-4), another eye witness to the incident, had deposed that he has a Pan shop near Jogen Gogoi's shop and that the appellant Ganesh Kalita has assaulted Jogen Gogoi on his left eyebrow with a hammer as a result of which Jogen Gogoi fell down on the ground writhing in pain and died after 3-4 minutes of the incident. PW-4 has also stated that the appellant picked up a hammer from his own shop and thereafter come to the shop of Jogen Gogoi. The said witness had also confirmed that the police had seized the hammer from the shop of the appellant by Ext.-2 seizure list and has identified his signature Ext. 2(3). Smt. Bina Gogoi (PW-5) is another eye witness to the incident. She had deposed before the Court that on 03/09/2011 while she was waiting for a bus at Partha's Pan shop, she saw the appellant Ganesh Kalita assaulting the deceased Jogen Gogoi with a hammer picked up from his bicycle store, situated on the eastern side of the road. PW-5 had also deposed that the appellant has assaulted Jogen Gogoi on his head, as a result of which he fell down and died on the spot. From the testimony of the above witnesses it can further be seen that the bicycle store of the appellant is located across the road, on the opposite side of the Bicycle store owned by the deceased.

6. The post mortem report Ext-1 indicates that the victim had suffered lacerated injury about 3" x 1" x 1" in size extending from left forehead to the eye socket completely damaging the left eye which was fatal in nature. Dr. Satyajit Dowarah, who had conducted the post mortem examination on the body of the deceased person, was examined as PW-1, who had opined that the cause of

death was shock and intracranial hemorrhage resulting from head injury sustained by the deceased.

7. The prosecution side had examined as many as 10 witnesses including 4 (four) eye witnesses to the incident i.e. PWs-2, 3, 4 and 5. All the witnesses have supported the prosecution story. During the cross examination, the defence side could not dislodge the testimony of any of the witnesses produced by the prosecution.

8. During his examination under Section 313 of the Code of Criminal Procedure, the appellant had admitted that the police had seized the hammer used in commission of the crime from the shop of the appellant. Although the defence side has examined one witness, viz. Shri Bogai Kalita (DW-1) who had stated in his deposition that on 03/09/2011 from 12 noon till evening, the appellant was with him plucking tea leafs in his tea garden and within his sight, yet, we find that the said testimony of DW-1 cannot at all be relied upon since the defence side had nowhere put any suggestion to the PWs nor projected the defence case taking such plea of alibi. Moreover, there is also no corroboration of the testimony of the DW-1.

9. As has been mentioned hereinbefore, the prosecution has examined as many as 4 (four) eye witnesses to the incident, whose testimony leaves no manner of doubt that the appellant had picked up a hammer from his bicycle store and thereafter come to the cycle store of the deceased Jogen Gogoi and dealt a fatal blow on his left eye which had resulted into the death of the deceased Jogen Gogoi. The nature of injury suffered by the victim and the cause of death also stands established from the Post Mortem report Ext-1 as well as the testimony of the doctor examined as PW-1.

10. A careful examination of the evidence available on record clearly goes to show that the prosecution has succeeded in establishing the guilt of the appellant beyond any reasonable doubt by adducing cogent evidence on record. As such, the learned Trial Court, in our view, has rightly convicted the appellant under Section 447/302 of IPC and sentenced him to imprisonment for life with fine of Rs. 5,000/-.

11. For the reasons stated herein above, we do not find any merit in this appeal and the same is accordingly dismissed.