

(2008) 09 GAU CK 0101
In the Gauhati High Court
Case No : Criminal Appeal No. 64 (J) of 2005

Hasta Bahadur Rai

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 1 GLD 239

Hon'ble Judges : P.K. Musahary, J;Aftab H. Saikia, J

Bench : Division Bench

Advocate : A. Ozah, Amicus Curiae, for the Appellant; B. Benerjee, Learned P.P., for the Respondent

Final Decision : Dismissed

Judgement

Aftab H. Saikia, J.—Heard Mr. A. Ozah, learned Amicus Curiae appearing for the Appellant from jail as well as Mr. B. Benerjee, learned P.P., Arunachal Pradesh.

2. The Appellant from jail has challenged his conviction u/s 302, IPC and sentence to undergo imprisonment for life so imposed by the learned Deputy Commissioner Cum-Ex-Officio Session Judge, Lower Subansari District, Ziro (for short, "the D.C.") by his judgment dated 4.5.2005 passed in Sessions Case No. 34/2004.

3. The prosecution case in brief is that on 9.8.2004 Shri Taba Chadha, PW-2 (Gaon Burah of Yazali Market) lodged an FIR with the Yazali police station alleging that around 0645 hrs. on that day one Shri Hasta Bahadur Rai alias Kohila, the Appellant, killed his own wife Smt. Bimla Rai (hereinafter referred to as "the deceased") by stabbing with a knife. Accordingly, the police registered a case u/s 302, IPC and investigation ensued. On completion of the investigation, the police submitted charge-sheet against the accused-Appellant u/s 302, IPC.

4. In course of trial, the prosecution examined as many as 5 witnesses including

PW-4 Smt. Durga Rai as eye-witness and 2 official witnesses namely, Dr. Bengia Abo, PW-1, who conducted the autopsy on the dead body of the deceased and PW-5 Shri Bage, the Investigation Officer (for short "the IO").

5. The learned D.C. Having meticulously appreciated the testimony of those witnesses including the evidence of eye witness PW-4 and also taking into account the statement of the accused-Appellant so recorded u/s 313, Code of Criminal Procedure as well as upon hearing the learned Counsel for the parties, found the Appellant guilty for the offence of committing murder of his wife and accordingly, convicted and sentenced the Appellant as indicated above.

6. Basically the conviction has been based on the testimony of the sole eye witnesses as mentioned above.

7. On careful scrutiny of the entire evidence of those witnesses including the eye witness PW-4 as well as the statement so recorded by the Appellant u/s 313, Code of Criminal Procedure, we find that PW-4, the eye witness, categorically stated that her father initially assaulted her mother on the head by a wooden stick thrice. After assault on her mother on head, the deceased fell down on the ground. Then her father took a knife and stabbed the deceased on the stomach and at that moment she administered water to her mother but she could not drink. Then the Goanburah (PW 2), a neighbour, came to their place who found that the accused was standing in the house with a knife in his hand. When he (Goanburah) asked the Appellant about the reason for killing her mother, accused emphatically stated that her wife was wicked and so he killed her. PW-3, Samar Biswakarma, in his deposition stated that coming to the place of occurrence he found the deceased was lying on the ground near the kitchen and blood was oozing from the mouth of the deceased and he saw the accused holding a stick inside the house. He immediately rushed to Gaonburah along with one Durga and after coming back he saw the accused was standing holding a knife in his hand. Same story was also corroborated by PW-2 and PW-5 who also stated that they found the accused-Appellant inside the house of the deceased holding one knife in one hand and a wooden stick in other hand.

8. The Appellant in his statement so recorded u/s 313, Code of Criminal Procedure against the question clearly stated as follows:

I admit that I had hit her with wooden stick and also stabbed with sharp knife. But I do not know whether she died due to this.

9. In the medical evidence of Dr. Bengia Abo PW-1, he found the following injuries on the person of the deceased:

1. A lacerated wound of scalp measuring 7.5 cm by 1.5 cm by muscle deep originating at an area approximately overlying the right pterion then running pastero inferiority across the right temporal region up to the upper border of right pinna and then along the pastoricular suicus up to the right mastoid process. In the process the pinna is detached partially from its bony attachment.

The lateral surface of the right amicle is lacerated and confused.

2. Lacerated injury on the right side of forehead measuring 1 cm into 0.3 cm into muscle deep associated with contusion of the surrounding area measuring 8 cm into 4 cm. Therefore I opened the dead body and found the following internal injuries:

(1) Stab wound measuring 2.5 cm into 1 cm into viscera deep positioned in the umbilical region just to the left of midline and located 7 cm below the xiphoid process and directed upwards backwards and to the right. The depth of stab would punctured the anterior wall surface of the transverse colon in its middle third.

(2) Rupture of the right middle meningeal artery leading to extensive extra dural and sub dural hemorrhage.

(3) Laceration of the dura matter and arachnoid matter in the area underlying the injured scalp.

(4) Contusion of brain in the right parietal, frontal and temporal areas.

(5) Comminuted fracture of the right temporal parts of the right parietal, frontal and the greater wing of sphenoid. The fragments are depressed. The fracture extending further along the suture line between the right temporal and greater wing of sphenoid and then along the hypophyseal fossa.

10. Having considered the facts and circumstances of the case in its entirety including the injuries inflicted on the deceased as well as the deposition of the PW-4, the eye witness and the statement of the accused-Appellant so recorded u/s 313, Code of Criminal Procedure, we are of the considered view that it was only the Appellant, who killed his wife. The prosecution could successfully prove its case beyond all reasonable doubt in bringing home the charge u/s 302, IPC against the Appellant. Under the premises we are in full agreement with the views expressed and findings recorded by the learned DC in his impugned judgment and consequently, we have no hesitation to uphold the conviction and sentence so handed down.

11. In view of what has been stated, discussed and observed above, we are of the considered view that no interference is warranted with the impugned conviction and sentence so imposed by the learned DC.

12. In the result, this appeal fails and stands dismissed.

13. Send down the LCR immediately.

14. Before parting with the judgment, we would like to put on our appreciation to Mr. A Ojah, learned Amicus Curiae for his valuable assistance rendered to arrive at a conclusion in the abovementioned appeal. Accordingly, we order that he is entitled to get his professional fee which is quantified at Rs. 5,000/-.