
(2019) 07 GAU CK 0045
In the Gauhati High Court
Case No : Criminal Appeal No. 187 Of 2014

Jamuna Gour And 2 Ors

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 24-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 323, 325, 326

Citation : (2019) 07 GAU CK 0045

Hon'ble Judges : Achintya Malla Bujor Barua, J;Ajit Borthakur, J

Bench : Division Bench

Advocate : R P Sarmah

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Mr. K A Mazumdar, learned counsel for the appellant No.1. Also heard Mr. M Phukan, learned Additional Public Prosecutor for the State authorities. It is stated that the informant has died in the meantime.

2. An ejahar dated 12.01.2006 was lodged by Bhuvan Gorh before the Officer-in-Charge of Lala Police Station, Hailakandi stating that at about 9AM, on the given day, the accused No.1 therein, namely, Achal Gorh had thrown some cow dung in their well which was in front of their house. When the daughter and the wife of the informant protested, the accused persons namely Achal Gorh, Baska Gour, Laika Gorh and Jamuna Gorh unitedly attacked the wife and the daughter of the informant and caused injuries on them. When a hue and cry was raised, his son Manoj Gorh and the informant himself reached the place of occurrence. Thereafter the accused persons had assaulted the informant and his son.

3. In the circumstances, Lala PS Case No.04/2006 dated 12.01.2006 was registered under Sections 325/326/34 of the IPC. About four days later, the injured son of the informant, Manoj Gorh died in the hospital and thereupon Section 302 was added for the purpose of investigation. Upon investigation,

Achawal @ Achal Gour, Barkalaika Gour and the present appellant Jamuna Gour were charged of having caused the death of the son of the informant Manoj Gour and thereby committed an offence under Section 302 of the IPC.

4. The informant, Bhuban Gour, who deposed has PW-2 in his deposition stated that he heard a hue and cry from his house and when he returned back, he saw that his son Manoj Gour was lying on the ground in front of the house of the accused Jamuna. He deposed that later on he came to know from his wife and daughter that Achal Gour, Barkalaika Gour and the present accused appellant Jamuna Gour had inflicted injuries to his son with an axe.

5. PW-2 Lakhiya Gour, who is the daughter of the informant, Bhuban Gour in her deposition stated that at the time of occurrence, she was unmarried and was residing in her parental home. On the day of the incident, at the relevant point of time, she was at home and the occurrence took place on the road in front of the house of Achal Gour. When she heard some cries and upon rushing to the place of occurrence saw that Achal Gour was assaulting her brother with an axe. She also deposed that accused Barkalaika Gour had also assaulted her brother with lathi and rod. She further deposed that accused Jamuna also assaulted her brother with a lathi. When she and her mother went to the place of occurrence, Achal had also assaulted them with lathi and rod because of which they sustained injuries. She deposed that later on her father came to the place of occurrence and her brother was taken to the Lala Police Station, wherefrom he was shifted to the Lala PHC and thereafter to Hailakandi Civil Hospital.

In cross, PW-2 stated that she arrived at the place of occurrence after her mother and that her brother Manoj Gour died four days after the occurrence. She also stated in cross that she cannot say about the circumstances leading to the death of her brother.

6. PW-3, Munia Gour who is the wife of the informant in her deposition stated that after taking meal when she and her son were proceeding to their place of work and reached the place in front of the house of Achal, Achal assaulted her son with an axe and inflicted three blows and when she tried to rescue her son, Achal also inflicted two lathi blows on her head and her hand. In the meantime, her daughter Lakhiya came to the place of occurrence and Achal also inflicted blows on her with a lathi. She further deposed that at that time, the other accused person, Jamuna and Barkalaika who were present at the scene started assaulting them. Subsequently, the injured Manoj Gour was brought to the Lala PS wherefrom he was taken to the Lala PHC and thereafter to the Lala Civil Hospital.

In cross, PW-3 stated that she had not witnessed as to who had assaulted her son Manoj.

7. PW-10, Dr. Subendu Chackrobarty who had conducted the post mortem examination in his deposition had stated that the following injuries were found on the body of the deceased Manoj Gour:

"(i) One bruise size of 15.3cm x 4.2cm running vertically downwards from just below the inferior angle of the right scapula on the posterior axillary line.

(ii) One bruise of size 6.4cm x 4.3cm is seen on the upper part of the right knee running horizontally. The right knee is found swollen.

(iii) One bruise of size 5.8cm x 4.4cm is seen on the middle of the left knee joint running obliquely. The joint is found swollen.

(iv) One lacerated injury of length 2cm with irregular margin and stitch is seen on the lateral aspect of the middle of the right leg."

In the opinion of PW-10 Doctor, the death was due to shock caused by the combined effects of intra abdominal hemorrhage from ruptured liver and pneumothorax and haemothorax following grievous blunt chest injury.

8. In the present appeal, we are only concerned with the accused Jamuna Gour.

9. PW-2 in her deposition had stated that although the other accused persons were assaulting the deceased Manoj Gour, the accused Jamuna also assaulted him with a lathi.

10. PW-3 in her deposition stated that Jamuna and Barkalaika who were also present at the place of occurrence had both assaulted them. From the evidence of PW-3 at the best, it can be inferred that Barkalaika and the accused appellant Jamuna had also assaulted them where the expression 'them' would mean the daughter PW-2, wife PW-3 and the deceased Manoj, being the son of the informant. From her evidence, it is unidentifiable as to whether the accused Jamuna had inflicted the blows to the deceased Manoj which had resulted in the four injuries as recorded above.

11. PW-2 stated that the accused Achal had assaulted her brother with an axe and thereafter accused Barkalaika also assaulted him with a lathi and rod and thereafter it is stated that the accused Jamuna also assaulted the deceased Manoj. From the deposition of the PW-2 also it would be difficult to infer that the accused Jamuna had inflicted the blows upon the deceased Manoj which had resulted in the four injuries as mentioned above which according to the medical opinion was the cause of his death.

12. From the evidence against the accused Jamuna all that we can infer is that the accused had also assaulted the person present which includes the PW-2, PW-3 and the deceased Manoj. No injury report is available as regards any injury sustained by PW-2 and PW-3. As we are unable to arrive at a conclusion that all the injuries on the body of the deceased Manoj were caused because of the assault by the accused Jamuna, we are of the view that the accused Jamuna can be convicted only for the offence of having assaulted the deceased which may have resulted in some injury. Accordingly we convict the accused Jamuna under Section 323 of the IPC. From the evidence on record, it is again not discernible that there was a common intention on the part of all the accused persons to

cause the injuries and accordingly we are unable to sustain the conviction of the accused Jamuna under Section 34 of the IPC.

13. We have taken note of that in the judgment dated 26.08.2014 of the learned Sessions Judge, Hailakandi in Sessions Case No.54/2010, the accused Jamuna was sentenced to pay a fine of Rs.1000/- in default thereof to a simple imprisonment of 3(three) months for the offence under Section 323 of the IPC. Accordingly having convicted the accused Jamuna under Section 323 of the IPC, we retain the sentence of fine of Rs.1000/- and the default imprisonment of 3(three) months against the accused appellant concerned.

14. It is stated that the accused appellant had already undergone imprisonment for a period of 7(seven) months. Accordingly the period already undergone is set off against the sentence imposed on Jamuna Gour.

15. The appeal stands allowed to the extent indicated above.

16. Send back the LCR.