
(2016) 12 GAU CK 0046
In the Gauhati High Court
Case No : Crl Appeal No. 133 (J) of 2013

Jogen Saikia

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2017) 2 GauLR 114

Hon'ble Judges : Mr. Ajit Singh, CJ. and Mr. Manojit Bhuyan, J.

Bench : Division Bench

Advocate : S. Borgohain and B. Devi, Advocates, for the Appellant; M. Phukan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Manojit Bhuyan, J.(Oral)—The appellant Jogen Saikia has been convicted under Section 302 of the Indian Penal Code and sentenced to imprisonment for life with fine and default stipulations for causing the death of Suren Dutta.

2. According to the prosecution case, on 15.11.2007 at about 7 P.M., the appellant assaulted and caused grievous hurt on Suren Dutta in the appellant's courtyard whereupon Suren Dutta was taken to Sivasagar Civil Hospital and then to Assam Medical College & Hospital, Dibrugarh where he died after eleven day stay in the said hospital. Ejahar in the case was lodged by Padmeswar Dutta (PW-1) on 16.11.2007 before the Gaurisagar Police Station. A police case, being Gaurisagar P.S. Case No. 78/2007, was registered against the appellant under Sections 341/325 IPC. Investigation of the case commenced, memos were drawn, autopsy was conducted on the person of Suren Dutta, statements of witnesses were recorded. Upon completion of the investigation of the case, during which time Suren Dutta died at the Assam Medical College & Hospital, Dibrugarh on 30.11.2007, Charge Sheet against the appellant was submitted under Section 302 IPC. The case was committed to trial and formal charge under Section 302 IPC was framed against the appellant.

3. To bring home the guilt of the appellant, the prosecution examined as many as 10 (ten) witnesses including the Medical Officer who conducted the autopsy as well as the Investigating Officer of the case. The appellant was also examined under Section 313 CrPC.

4. Out of all the prosecution witnesses, direct evidence as regards the guilt of the appellant was adduced by Numal Dutta (PW-3). According to the said eye-witness, on 15.11.2007 at around 7 P.M., he and Suren were returning home from the house of Suren's father-in-law. Suren was walking about 10/15 ft. ahead of him and when they reached the gateway of the appellant's house, Numal heard shouts and flashing his torch he saw the appellant dealing blow on Suren with an axe. Suren fell down on the ground and thereafter the appellant entered his own house taking the axe in his hand. Numal stated that he could recognize the appellant. He also stated that he informed Jiten Dutta (PW-2) and others about the incident.

5. Jiten Dutta (PW-2) deposed that during the same time he was on his way to his father-in-law's house on a bicycle taking along a torch with him. Numal Dutta (PW-3) came in a run and informed him that the appellant had assaulted Suren Dutta. On reaching the place of occurrence, he saw the appellant and the elder brother and father of the appellant at their gateway. He also deposed to have seen the three persons dragging Suren Dutta to their courtyard.

6. Dr. Renuka Rangphaspi (PW-9) conducted Post Mortem on the dead body of Suren Dutta. She proved the Post Mortem Report as Ext. 3 and Ext. 3(1) as her signature. Upon examination, PW-9 recorded presence of injuries on the head of Suren caused by blunt impact which was sufficient to cause death of a person in the ordinary course of nature. All the injuries were ante-mortem. Md. Saidur Rahman (PW-10) was the Officer in-charge of Gaurisagar Police Station during the relevant period. He proved the Seizure List (Ext. 2) as well as the signature of the Investigating Officer as Ext. 2 (3). Besides, he also deposed that a bamboo lathi was seized from the place of occurrence. The fact that Police had seized a split bamboo in front of the gateway of the appellant's house also found support from the evidence of Aboni Saikia (PW-8), who is the father of the appellant. The said PW-8 also endorsed on the Ext. 2 Seizure List by putting his signature.

7. The conviction and sentence of the appellant on the basis of the evidence tendered by Numal Dutta (PW-3), duly supported by medical evidence, is assailed by the appellant on ground that the evidence of PW-3 with regard to the weapon employed itself creates a doubt as to the authenticity and veracity of the testimony of PW-3. Counsel representing the appellant submits that PW-3 as an eye witness deposed before the Court that he had seen the appellant dealing blow on Suren with an axe whereas the weapon seized from the place of occurrence is a split bamboo used for tethering cattle. The discrepancy in the description of the weapon by PW-3 has been taken as the sole ground of defence and that the same creates doubt on the testimony of PW-3.

8. Although the statement made by Numal Dutta (PW-3) under Section 161 Cr.P.C. and that of the ejahar (Ext. 1) may not have evidentiary value, however, weapon mentioned therein is a bamboo/lathi. Medical evidence brought on record clearly shows that Suren Dutta died of injuries on the head caused by blunt impact which were sufficient to cause the death of a person in the normal course of nature. This fact is not in dispute. The particulars of the injuries can only be connected to a blunt weapon, whether it be the blunt side of an axe or a heavy bamboo used for tethering cattle. Apparently, Suren died of blunt impact on the head. Apart from the above, the involvement of the appellant in causing blow on Suren Dutta was witnessed by Numal Dutta (PW-3), with corroboration by Jiten Dutta (PW-2) who stated that when he was riding a bicycle on his way to his father-in-law's house, Numal Dutta came in a run and told him that the appellant had assaulted Suren Dutta. The testimony of Numal Dutta (PW-3) could not be demolished by the defence nor the evidence of Jiten Dutta (PW-2).

9. On the basis of the clear evidence of Numal Dutta (PW-3) as having witnessed blow dealt upon by the appellant on Suren Dutta, which finds corroboration with medical evidence brought on record, we do not find anything to disbelieve the prosecution case and that of the testimony of Numal Dutta (PW-3). We hold that the prosecution has been able to prove the charge under Section 302 of the Indian Penal Code against the appellant beyond all reasonable doubt. As a necessary corollary, we find no good ground to interfere with the conviction and sentence imposed upon the appellant by the Court below. The present appeal stands dismissed and the conviction and sentence of the appellant stands affirmed.

10. Lower Court Records be sent back forthwith.