
(2016) 07 GAU CK 0010
In the Gauhati High Court
Case No : Criminal Appeal No. 37 (J) of 2012

Lakhi Chetia

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 11-07-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 324, 34

Citation : (2016) 165 AIC 593 : (2016) 5 GauLJ 122 : (2016) 5 GauLR 149

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

Bench : Division Bench

Advocate : Mr. T.H. Hazarika, Learned Amicus Curiae, for the Appellant/Accused;
Mr. K. Munir and Mr. S. Das, learned Public Prosecutor, Assam, for the
Respondents

Final Decision : Dismissed

Judgement

Mr. Ajit Singh, C.J.—The sole appellant Lakhi Chetia has been convicted under Section 302 of Indian Penal Code and sentenced to imprisonment for life and fine of Rs. 2000/- with default stipulation for committing the murder of Rintu Gogoi. The appellant has also been convicted under Section 324 of Indian Penal Code and sentenced to Rigorous Imprisonment for one year for causing injury to Debalaxmi Gogoi (PW 2). It is to be noted that co-accused Ramu Munda has been acquitted of the charges under Section 302 and 324 read with Section 34 of Indian Penal Code.

2. Victim Rintu was owner of two trucks and the appellant was employed as Driver of one of the trucks. Since Rintu had not settled full dues of the appellant, he had started working with one Kushal. The appellant also nurtured a grudge against Rintu for not settling his dues. On 5.2.2009, the appellant visited the house of Rintu many times, but did not find him there. On the same day, around 6 PM, the appellant again visited the house and persuaded Rintu to accompany him upto the house of Kushal. After few minutes, Debalaxmi heard the outcry of Rintu. She being the mother of Rintu, naturally rushed from her house towards

the place of occurrence. There she saw appellant causing injuries to Rintu with a sharp edge weapon -Khukuri. Debalaxmi immediately intervened to prevent appellant from causing injuries to Rintu. The appellant then caused an injury to Debalaxmi also with the same weapon on her chin and ran away. On hearing the commotion, number of persons reached the spot to whom Debalaxmi narrated the incident and disclosed how the appellant had caused injuries to her and Rintu. Immediately, a vehicle was arranged in which Rintu was carried to Moran Medical Centre for treatment. But he died on way. Debalaxmi was however referred to Sanjivani Hospital, Dibrugarh where she was admitted for treatment. Father Mahendra Ranjan Gogoi (PW 1) of Rintu lodged the Ejahar on the date of incident itself at Police Station Moranhat which was recorded by Sub Inspector Sanjib Saikia (PW 14). In the Ejahar, name of appellant is categorically mentioned as assailant of Rintu and Debalaxmi.

3. The post mortem examination of the dead body of Rintu was carried out on 6.7.2009 by Dr. Sanjib Mahanta (PW 11). He found the following injuries on the body of Rintu:

"(1) One lacerated wound below the left eye - 4cm x 2 cm x 3cm in size. The underline bone is cut.

(2) One lacerated wound over the left ear which is almost severed in the middle.

(3) One sharp cutting wound over the left side of neck, 6cm x 5cm x 5cm in size, underlying large vessels are cut.

(4) One semicircular wound over the middle of left eye. A portion of the tissue is chopped off.

(5) One semicircular incised wound below the left cubital fossa, 6cm x 6cm x 10cm in size.

(6) One stabbed wound over the left loin - 4cm x 5cm x 2cm in size.

(7) Two stabbed wounds over the back below the left rib angle - 4cm x 5cm in size."

In the opinion of Dr. Sanjib Mahanta, injuries were ante mortem and homicidal in nature and cause of death of Rintu was due to shock and hemorrhage as a result of injuries sustained by him. The post mortem examination report of Dr. Sanjib Mahanta is Exhibit 6.

4. The police arrested the appellant on 10.2.2009. Exhibit 14 is the injury report dated 12.2.2009 of Debalaxmi prepared by Dr. RK Borokotoky, Superintendent of Sanjivani Diagnostics & Hospital, Dibrugarh. According to this report, Debalaxmi was admitted on 5.2.2009 in the Intensive Care Unit and was treated by Dr. T Hazarika. The report further says that Debalaxmi was discharged from the Hospital on 12.2.2009 with a liner stitched wound about 4 inches long over the chin. But later Dr. RK Borkotoky suffered from some serious diseases. The injury report prepared by him was therefore proved by Dr. Dharmanand Nath (PW 15),

who was posted in the same hospital.

5. On 13.2.2009, the appellant was produced before the Munsiff-Magistrate, Manju Bardoloi (PW 13) for recording his confessional statement under Section 164 of the Code of Criminal Procedure. The Munsiff Magistrate, on that date, found certain injuries including one on the head of appellant. And on her asking, the appellant replied that at the time of arrest, he was beaten up by the Police and some SULFA boys. The Munsiff Magistrate recorded this statement of appellant and directed for his production on 16.2.2009. The appellant was therefore again produced before the Munsiff Magistrate on 16.2.2009, who recorded his confessional statement (Exhibit 8) under Section 164 of the Code of Criminal Procedure. The appellant, in his confessional statement, narrated that he had hit Rintu with a fencing post because Rintu first gave him fist blows. He also alleged that there was dispute over settlement of his dues with Rintu.

6. During the trial, the appellant did not examine any witness. He however, took the plea that he had exercised the right of private defence. And while being examined as an accused under Section 313 of the Code of Criminal Procedure, the appellant also admitted that he had hit Rintu with a fencing post to save himself because Rintu had hit him on his head with a lathi. The appellant however further stated that he had worked as Driver of Rintu, who owed him Rs. 28,000/- and the incident took place because of the dispute over payment of dues. But the trial court did not believe the defence of the appellant and convicted and sentenced him as aforesaid.

7. Since the appellant has admitted that he had hit Rintu in his self defence, we have to examine whether such a right really existed to him. Debalaxmi is an injured eye-witness to the incident. This witness has categorically testified that she saw the appellant repeatedly causing injuries to Rintu with a sharp edge weapon - Khukuri on the road. She has also testified that when she intervened, the appellant even caused an injury on her chin with the same weapon and ran away. She, in her cross examination, denied the suggestion that at the time of incident, Rintu had pistol with him or that he had chased the appellant and pushed him on the ground. Debalaxmi has also denied the suggestion that the appellant stabbed Rintu with a fencing post, when the latter chased him. The evidence of Debalaxmi is substantially corroborated by the post mortem examination report of Rintu as well as her injury report. The post mortem examination report of Rintu clearly reveals that number of incised and stabbed wounds were caused to him. Not only this, left side neck of Rintu with underlying large vessels were also cut by the appellant. These injuries can be caused only by a sharp edged deadly weapon and certainly not by a fencing post as stated by the appellant in defence. And importantly, the appellant did not disclose to Munsiff Magistrate Manju Bardoloi on 13/2/2009, who recorded his confessional statement, that Rintu had caused any injury to him. As already seen above, on the asking of Munsiff Magistrate, the appellant had stated that he was beaten up by the Police and some of SULFA boys accompanying the police at the time of his

arrest. Had the appellant been actually assaulted by Rintu, he would have definitely disclosed this fact to Munsiff Magistrate on 13/2/2009 itself. For these reasons, we are of the view that the plea of the appellant that he had exercised the right of private defence is after-thought and false and has rightly been disbelieved by the trial court. Also the evidence of Debalaxmi, her injury report and the post mortem examination report of Rintu leads to only one conclusion that appellant committed the murder of Rintu most brutally on a public road with a sharp cutting weapon like khukuri and when Debalaxmi intervened, he caused an injury with the same weapon on her chin and ran away.

8. The appeal has no merit and is accordingly dismissed.