

(2024) 05 GAU CK 0015
In the Gauhati High Court
Case No : Criminal Appeal (J) No. 86 Of 2020

Maresh Munda

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 13-05-2024

Acts Referred:

Indian Penal Code, 1860 — Section 300, 302, 304II, 326
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2024) 05 GAU CK 0015

Hon'ble Judges : Suman Shyam, J;Arun Dev Choudhury, J

Bench : Division Bench

Advocate : B Bhagawati, B. Bhuyan, N. Chakraborty

Final Decision : Dismissed

Judgement

Suman Shyam, J

1. Heard Mr. B. Bhagawati, learned Amicus Curiae, appearing for the appellant. We have also heard Ms. B. Bhuyan, learned senior counsel and APP, Assam, assisted by Ms. N. Chakraborty, learned counsel, appearing for the State.

2. The present appeal has been preferred by the sole appellant assailing the judgement and order dated 07/05/2018 passed by the learned Sessions Judge, Sivasagar in Sessions case No. 33(S-S)/2015, convicting him under sections 302/326 of the Indian Penal Code (IPC) for committing the murder of deceased Smt. Shanti Munda i.e. the mother of the accused and sentencing him to undergo rigorous imprisonment for life and also to pay fine of Rs. 1000/- for committing the offence punishable under section 302 of the IPC; the accused/appellant was also sentenced to undergo rigorous imprisonment for 5 (five) years and to pay fine of Rs. 1000/- for committing the offence punishable under section 326 of the IPC.

3. The prosecution case, in a nutshell, is that on 09/07/2014, an ejahar was lodged with the Officer-in-Charge of Demow Police Station reporting that the

appellant Mahesh Munda, under the influence of alcohol, engaged himself in a quarrel with the informant and hacked the informant as well as his wife with a dao, resulting in the death of Shanti Munda. It was also mentioned in the ejahar that the appellant had inflicted cut injuries on the head and left leg of the informant and thereafter, fled away.

4. On receipt of the ejahar dated 09/07/2014, Demow PS Case No. 215/2014 was registered under sections 302/326 of the IPC and the matter was taken up by the Police for investigation. On completion of the investigation, charge sheet under sections 302/326 IPC was submitted against the appellant. The learned Sessions Judge had framed charge against the appellant under sections 302/326 of the IPC. The charge, having been read out and explained to the accused, he had pleaded not guilty and, therefore, the matter went up for trial.

5. During trial, the prosecution had examined as many as 9 (nine) witnesses including 1 (one) eye witness i.e. the PW-2 (informant) to bring home the charge. The defence side did not lead any evidence. In his examination under section 313 Cr.P.C., the accused had, however, pleaded innocence.

6. After going through the materials available on record, the learned trial Court has held that the charges brought against the accused person have been proved beyond reasonable doubt and accordingly, sentenced the appellant in the manner indicated herein above.

7. Mr. M. Bhagawati, learned Amicus Curiae, by referring to the materials on record submits that in view of the discrepancy as regards the actual date and time of occurrence, there is some doubt on the prosecution story. The learned Amicus Curiae has further submitted that in view of the evidence of the eye witness (PW-2), it is a fit case for conversion of the conviction and sentence awarded to the appellant to one under section 304 Part-II of IPC.

8. Ms. B. Bhuyan, learned APP, Assam, has submitted that the prosecution case has been proved beyond reasonable doubt and, therefore, there is no scope of this Court to interfere in the matter.

9. We have considered the submissions advanced by the learned counsel for both the sides and have also gone through the materials on record.

10. Since the prosecution case is entirely based on the evidence of the PW-2 Sri Bir Singh Munda, who is an injured eye witness and is a star witness in this case, at the outset, we propose to examine the evidence adduced by the PW-2.

11. As stated above, PW-2 is the father of the accused and the husband of the deceased. He is also an injured eye witness. PW-2 has deposed before the Court that about 3 (three) years ago, his wife Smt. Shanti Munda was hacked to death with a dao by the accused. He has further deposed that the accused had also hacked him, as a result of which, he had sustained injuries on his head and was admitted in Joysagar Civil Hospital for 7 (seven) days. The accused had fled the scene after committing the incident. In his cross examination, PW-2 could not be

shakened. Rather, this witness had gone on to state the circumstances under which, the quarrel took place, leading to the incident.

12. PW-3 Dr, Saukot Hussain was the doctor on duty working at the Sivasagar Civil Hospital on 09/07/2014 when the dead body of the deceased Shanti Munda was brought to the hospital for conducting post-mortem examination. PW-3 has proved the post-mortem report (Ext-1) by identifying his signature therein. According to the Doctor, the following injuries were found in the body of the deceased.

"1. External appearance :

Female, around 60 years. Rigor mortise present

2. Injury :

(i) Incised wound 2 Inch x ½ Inch on right side of upper lip.

(ii) Incised 3 Inch x ½ Inch wound, oblique over left joint angle of mouth extending to face dividing mucosa of cheek.

(iii) Incised 3 Inch x ½ Inch wound over right side of forehead. Depth to bone with fracture of underlying bone.

(iv) Incised 2 Inch skin wound over left angle of jaw.

(v) Incised 4 Inch x 1 & ½ Inch transverse wound over medial aspect of left forearm, lower 3rd incising muscle tendon and blood vessels.

(vi) Incised 4 Inch x 1 Inch wound over right mid-thigh anteriorly muscle deep.

(vii) Incised 1 & ½ Inch x 1 Inch wound over anterior aspect of left knee joint above patella, muscle deep."

The doctor has opined that the death of the deceased was due to haemorrhage and shock on account of the injuries sustained.

During his cross examination, nothing significant could be extracted by the defence side.

13. PW-1 Sri Anil Chowra was serving as the Secretary of the VDP at the relevant point of time. He has deposed before the Court that on being informed by the public about the incident, he went to the place of occurrence and saw the dead body. He also saw the informant Bir Singh Munda (PW-2) lying there with cut injuries.

14. PW-4 Sri Kumud Chandra Gadba was working as the Assistant Secretary of the VDP. He has also deposed that on 08/07/2014, he received information through the Secretary of the VDP that a murder took place at the residence of Mahesh Munda. He was also informed that accused Mahesh Munda has murdered his mother and physically assaulted his father. On coming to know about the incident he went to the house of the accused and saw the dead body of Shanti

Munda, which was lying in the room with injury on her chest. This witness has further stated that he had also seen Bir Singh Munda (PW-2) with cut injuries on his leg and hand. On being asked, Bir Singh Munda told that his son Mahesh Munda had killed his mother and also physically assaulted him with a dao in the night.

15. PW-6 Sri Gyandeep Gogoi has not seen the occurrence but he is a seizure witness of Ext.4 by means of which the Police has seized the dao from the accused.

16. PW-7 Sri Robin Munda is a co-villager and he has deposed before the Court that on 08/07/2014 while he was at his shop, villagers informed him that accused Mahesh Munda has murdered his mother Shanti Munda. On coming to know about the same, he along with the VDP party member, went to the house of the accused and saw the dead body of Shanti Munda lying inside the room. In his cross examination, PW-7 has stated that he has not seen the occurrence but his statement was recorded by the Police on the next day of the incident at about 8 a.m.

17. PW-8 Sri Arjun Telenga, another villager. He had also deposed that he is a resident of Rajmai Tea Estate. On 08/07/2014, while he was working, Police came and told him that a murder took place at Kachari Pathar Bhoot Ghat and requested him to accompany them. On coming to know about the same, he went along with the Policy party to the residence of Bir Singh Munda and saw the dead body of Shanti Munda lying inside the house. He had also seen Bir Singh Munda in an injured condition with injuries on several parts of the body. When the Police asked Bir Singh Munda in his presence, he had replied that his son Mahesh Munda has killed his mother and assaulted him. Police brought the dead body to the Police Station and Bir Singh Munda was shifted to hospital.

18. PW-9 Inspector Uma Kanta Bora was the 2nd Officer at the Demow Police Station on 09/07/2014 when the FIR was lodged by Bir Singh Munda, leading to registration of Demow PS Case No. 215/2014 under section 302/326 of the IPC. PW-9 has deposed as to the manner in which usual steps were taken by him while conducting investigation including drawing of sketch map (Ext.5); getting inquest conducted on the dead body by issuing requisition to the Circle Officer, Demow; sending the dead body of the deceased to the Sivasagar Civil Hospital for post-mortem examination; sending the informant for treatment to the Demow PHC and also arresting the accused on 10/07/014 and thereafter, recording his statement. PW-9 has also deposed that during investigation he had recovered a dao from the place of hiding of the accused on being shown by him. The dao was seized by means of seizure list (Ext.4) which contains his signature. On completion of investigation he had submitted charge sheet against the accused. The IO has proved the Ext.6 charge sheet by identifying his signature.

19. From the evidence on record, it is clear that the PW-2 i.e. father of the accused and the husband of the deceased, was present inside the house at the

time of occurrence. There is no doubt about the fact that PW-2 is an eye witness to the occurrence. Not only that, the PW-2 had received grievous injuries on being assaulted by the accused. The injury report of the PW-2 has been proved by Dr. Kamal Koiri, who was examined as PW-5. This witness was working at the Demow PHC as the Senior Medical and Health Officer on 09/07/2014 when the injured was brought for treatment.

20. From the testimony of PW-5, it is apparent that PW-2 had suffered incised wound over his right calf and fracture in both bone of right lower limb as well as incised wound over left side of the head.

21. From the testimony of PW-2, it is also firmly established that it was none other than the accused who had attacked him as well as Shanti Munda, leading to the death of the deceased.

22. The medical evidence brought on record, establishes beyond doubt that the victim in this case had died a homicidal death due to multiple injuries suffered by her. The medical evidence, when read in conjunction with the testimony of PW-2, leaves no room for doubt that it was none other than the accused /appellant who had inflicted grievous injuries on the body of the deceased.

23. The IO (PW-9) has deposed about the recovery of dao from the accused and the seizure witness (PW-6) has proved the seizure list of the dao.

24. Since it is a case of direct evidence, hence, it will be sufficient to the prosecution to show that there is convincing testimony of the eye witness giving correct account of the incident which, in our opinion, the prosecution has succeeded in establishing in this case.

25. We have also examined the statement of the accused recorded under section 313 of the Cr.P.C. where from, we find that he has failed to offer any explanation. Save and except, taking the plea of "innocence", the accused has not explained his stand although incriminating circumstances collected by the prosecution were put to him during the process of recording of statement under section 313 Cr.P.C. The accused has also not taken the plea of alibi and, therefore, there can be no denial of the fact that he was present in the house on the date of the incident.

26. Taking note of the materials available on record, the learned trial Court has held that the charge brought against the accused has been established beyond reasonable doubt and accordingly, convicted him. We do not find any justifiable ground to disagree with the conclusion drawn by the learned trial Court in the matter.

27. There is one aspect of the matter which has been highlighted by the learned Amicus Curiae, referring to alleged discrepancy in the actual date and time of the occurrence. However, on a careful scrutiny of the evidence on record, we find that there is actually no discrepancy in the matter. The evidence on record clearly points towards the fact that the incident took place inside the house of the deceased/informant, during late hours of 07/07/2014 but the news about the

murder broke only in the next morning i.e. on 08/07/2014, on which date not only the villagers but the Police also arrived at the place of occurrence. At that time, the victim had already died, the accused had fled the scene and the informant was lying injured. It is on such count, the injured was taken to the PHC for receiving treatment on 08/07/2014. It was only thereafter, the ejahar could be formally lodged on 09/07/2014 based on which, the Police case was registered. The dead body was also brought from the Police Station to the hospital for conducting post-mortem examination on 09/07/2014. These cumulative facts, when viewed in the light of the evidence on record, does not indicate any discrepancy, which is sufficient to raise a serious doubt on the veracity of the prosecution case.

28. We have also considered as to whether this can be treated as a fit case coming within the ambit of any of the exceptions of section 300 of the IPC. There is no evidence to suggest grave and sudden provocation leading the accused to commit the offence of murder. Moreover, looking at the sequence of events, more particularly, the number of incised injuries inflicted by the accused on the body of the victim, there is no element of doubt in this case that the accused had acted with extreme cruelty. Therefore, we are of the view that this is not a fit case for conversion of conviction of the accused/appellant to one under section 304 Part-I/ Part-II of the IPC.

29. In the result, this appeal is held to be devoid of any merit, the same is accordingly dismissed.

Send back the LCR.

Before parting with the case record, we wish to put our appreciation on record as regards the valuable assistance rendered by Mr. B. Bhagawati, learned Amicus Curiae and recommend that just remuneration, as per the notified rate, be paid to him.