
(2018) 03 GAU CK 0127
In the Gauhati High Court
Case No : CRL.A(J) 17 of 2014

MAHESWAR DEKA

APPELLANT

Vs

THE STATE OF ASSAM

RESPONDENT

Date of Decision : 27-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302
Code of Criminal Procedure 1973 — Section 313

Citation : (2018) 03 GAU CK 0127

Hon'ble Judges : AJIT SINGH, MANOJIT BHUYAN

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajit Singh, C.J.

1.The sole appellant Maheswar Deka has been convicted under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and fine of Rs.25,000/- with default stipulation.

2. The victim of the incident was Ajit Choudhury, aged about 55 years.

3. According to the prosecution case, on 23/6/2009 at about 2:30 PM, Ajit Choudhury was going from Mangaldoi town towards his house on his bicycle. The appellant was coming in pillion riding on bicycle with Haripada Mandal (PW2) from the opposite side. Basundhar Deka (PW1) was also going on his bicycle behind Ajit Choudhury and was at a little distance. When Ajit Choudhury and the appellant came face to face near 40 No.

Marowary Primary School, appellant obstructed Ajit Choudhury with a dagger and tried to assault him. Ajit Choudhury resisted the appellant with his

bare hands and both entered into a scuffle. Suddenly, appellant stabbed Ajit Choudhury with a dagger in his abdomen and also injured him on his head

and other parts of the body. Basundhar Deka and Haripada Mandal could not muster courage to stop the appellant and Ajit Choudhury fell on the

ground profusely bleeding. At that time, Taran Deka (PW-3), Dayaram Deka (PW-4) and Bireswar Deka (PW-6) also reached the place of

occurrence. Bireswar Deka then quickly snatched one 'gamocha' from a lady and tied the wound on the abdomen of Ajit Choudhury. Dayaram

Deka also saw Ajit Choudhury lying on the ground being injured. Taran Deka, Dayaram Deka and Bireswar Deka then apprehended the appellant and

brought Ajit Choudhury to the hospital in a vehicle. Ajit Choudhury was first taken to Mangaldoi and then to Gauhati Medical College and hospital.

Bikash Choudhury (PW-5) - son of Ajit Choudhury-while on his official duty as an Assistant Sub-Inspector of S.S.B. posted at Howly camp-also got

information about the assault made on his father over phone and he immediately rushed to the hospital. But all efforts made to save Ajit Choudhury

failed and he breathed his last at about 10 P.M. in the hospital. Bikash Choudhury could reach the hospital only after the death of Ajit Choudhury.

4. In the meantime, people who gathered in the place of occurrence, detained appellant and later on handed him over to the police at Mangaldoi Police

Station, where he was arrested. Basundhar Deka then lodged the First Information Report in the said police station.

5. Rohini Kumar Gohain (PW-7), the then attached officer of Mangaldoi Police Station, immediately rushed to the place of occurrence. There he

seized one dagger vide Exhibit-2 in the presence of Haripada Mandal, Taran Deka and Dayaram Deka. Rohini Kumar Gohain (PW- 7) also drew

sketch map and upon the death of Ajit Choudhury got the inquest done in the presence of Bikash Choudhury.

6. Dr. Nibedita Shyam, a Post-Graduate Student of Gauhati Medical College and Hospital, conducted the post mortem examination on the dead body

of Ajit Choudhury. She found multiple cut injuries over abdomen, forehead and underneath scalp, left side of head, nose extending from root to tip of

nose, a spindal shaped penetrating wound on abdominal cavity, deep on left side of abdomen in his dead body. One track of wound passed through

skin subcutaneous tissue peritoneum abdominal muscle, left kidney and spleen. According to Dr. Himagshu Das(PW-8), the then Demonstrator of

Gauhati Medical College and Hospital at that time, death was due to injuries, which were ante-mortem and caused by a sharp cutting weapon. The

post mortem examination report is Exhibit-4. Rohini Kumar Gohain after completing the investigation filed charge sheet Exhibit-5 against the appellant for an offence under Section 302 of the Indian Penal Code.

7. During trial, the appellant abjured his guilt and pleaded false implication. The trial court, however, relying upon the evidence of witnesses, namely,

Basundhar Deka, Haripada Mandal, Taran Deka, Dayaram Deka and Bireswar Deka examined as eye witnesses by the prosecution, convicted and sentenced the appellant as aforesaid.

8. After hearing the learned counsel for the parties and perusing the record, we are of the view that the appeal deserves to be dismissed. Basundhar

Deka has categorically deposed that he saw the appellant giving blows to Ajit Choudhury with a dagger. He has testified that at that time, he was

coming just behind Ajit Choudhury. The occurrence took place in broad day light and hence, there is no question of mistaken identity of appellant.

Basundhar Deka has also testified that appellant came in pillion riding with Haripada Mandal on a bicycle. Though, Haripada Mandal did not state that

appellant was in pillion riding with him, he did not deny the involvement of appellant in causing multiple injuries to Ajit Choudhury with a dagger. It is

his categorical testimony that appellant assaulted Ajit Choudhury with a dagger. He, however, added by saying that Ajit Choudhury had also assaulted

appellant with a branch of tree. According to him, Ajit Choudhury was coming from the opposite side carrying a branch of tree and appellant carrying

a dagger and suddenly they assaulted each other causing the death of Ajit Choudhury. But, no other witness has supported this piece of evidence of

Haripada Mandal. Haripada Mandal also did not state before police during investigation that he saw Ajit Choudhury giving blows to appellant with a

branch of tree. Hence, the evidence of Haripada Mandal to the effect that Ajit Choudhury dealt a blow to appellant cannot be believed since it is

apparently an afterthought and improvement of his statement. Besides, there is nothing on record to show that the appellant had sustained any injury

on his person. But the testimony of Haripada Mandal that appellant dealt dagger blows to Ajit Choudhury is truthful and reliable. Although appellant

took the plea in his statement recorded under Section 313 of the Code of Criminal Procedure that Ajit Choudhury assaulted him before hand, there is

no cogent evidence to support that plea and as such cannot be relied on. It is

true that Basundhar Deka has deposed that appellant came on pillion riding with Haripada Mandal, but he did not state this fact before police during investigation and hence this part of his evidence seems to be an afterthought. However, both Basundhar Deka and Haripada Mandal are consistent in their evidence that it was appellant alone who had caused multiple injuries to Ajit Choudhury in their presence with a dagger. Nothing has been brought in their cross examination to discredit them. Their evidence also stands corroborated by the post mortem examination report. Besides, in the First Information Report also which was lodged promptly by Basundhar Deka, the appellant has been categorically named as the assailant.

9. However, the testimony of Bikash Choudhury that his father Ajit Choudhury had disclosed him about Haripada Mandal and appellant obstructed his path whereafter appellant gave dagger blows is unbelievable as he did not make any whisper in this regard before the police during investigation.

Taran Deka is a seizure witness only and he did not state anything before police that he saw the appellant causing injuries to Ajit Choudhury. Similarly,

Bireswar Saikia stated before police that he found Ajit Choudhury in an injured condition smeared with blood when he ran to him hearing hue and cry

after the appellant had made the assault. Therefore, it can be safely held that Taran Deka and Bireswar Saikia did not actually see the appellant

making the assault and the former is only a seizure witness whereas the latter reached the place of occurrence immediately after the occurrence.

Hence, their evidence in the court to the effect that they saw the appellant assaulting Ajit Choudhury is not reliable. But though they were not eye

witnesses, there is ample evidence to establish that they reached the place of occurrence immediately and caught the appellant there and then handed

him over to the police.

10. For these reasons, we have no hesitation in holding that appellant alone was the perpetrator of the crime. The appeal has no merit and is

accordingly dismissed.