

(2016) 12 GAU CK 0038

In the Gauhati High Court

Case No : Criminal Appeal 138 of 2015 With I.A. 422 of 2015

Manjil Boruah @ Manjil Baruah

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 14-12-2016

Acts Referred:

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

Citation : (2017) 170 AIC 611 : (2016) 5 GauLT 567 : (2017) 2 NEJ 176

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

Bench : Division Bench

Advocate : Mr. K. Konwar, Addl. P.P, Assam, for the Respondents; Mr. T.J. Mahanta, Ms. P. Bhattacharya, Mr. A. Bhattacharya and Ms. B. Choudhury, Advocates, for the Appellants

Final Decision : Partly Allowed

Judgement

Mr. Manojit Bhuyan, J. - The two appellants Manjil Boruah @ Manjil Baruah and Deha Saikia @ Prabodh Saikia have been convicted under section 302/34 of the Indian Penal Code and sentenced to undergo imprisonment for life with fine and default stipulations.

2. The victim of the incident was Pradip Borthakur.

3. On 26.09.2010 an ejahar was lodged by Tarun Borthakur (PW1), who is the elder brother of the deceased Pradip Borthakur, before the Narayanpur Police Outpost alleging that on 24.09.2010 at around 9 p.m. the members of the deceased's family found Pradip dead in a pond. The police arrived on being informed and when they interrogated the daughter of the deceased Pradip during investigation, they came to learn that the appellants along with the wife of the deceased were involved in the incident and that they had killed Pradip. It was also stated that police had recovered two daos used in the incident. On the basis of the said ejahar, a case was registered as Bihpuria P.S. Case No. 346/2010 under Section 302/34 IPC. Investigation commenced, post-mortem was

conducted, necessary memos were drawn and statements of witnesses were recorded, more particularly that of Gyanashri Borthakur (PW9), being the daughter of the deceased and one of the co-accused Rani Borthakur, both under Section 161 and Section 164 Cr.P.C. Upon completion of investigation, charge-sheet was filed against all the three accused-persons and the case was committed to trial.

4. As many as 10 (ten) witnesses were examined from the prosecution side, including the Medical Officer who had conducted autopsy and the Investigating Officer. Two other persons were examined as Court witnesses along with examination of 4(four) persons from the defence side. The appellants along with the other co-accused i.e. Rani Borthakur were examined under Section 313 Cr.P.C. and stand taken was of total denial.

5. Upon completion of trial, Rani Borthakur was acquitted on benefit of doubt and set at liberty. The appellants herein were convicted and sentenced accordingly. The conviction of the appellants was primarily on the testimony of the daughter of the deceased Gyanashri Borthakur (PW9). Her evidence before the Court was corroborated by Ghana Kanta Neog (PW3), who is the Gaonbura of the concerned village. Save and except the said two witnesses, the testimonies of the other unofficial witnesses were more in the realm of hearsay. The cause of death, as brought of record through the post-mortem report (Ext.6) and that of the deposition of Dr. Rohini Kumar Bora (PW8) was due to shock and haemorrhage resulting from the injuries sustained. There were two incised wounds ? one in left cervical region above the medial end of left clavicle and the other in the left parietal region. In the opinion of PW8, the injuries were anti mortem in nature caused by sharp and heavy weapon.

6. For the purpose of ascertaining the culpability of the appellants and their respective role in the commission of the crime, the testimony of Gyanashri Borthakur (PW9) gains significance. The examination-in-chief of Gyanashri Borthakur is reproduced here under:

"My father was killed about 1? years ago. I witnessed the incident about 4-30 p.m. At that time after coming from school, I was just entering the house after washing my hands and feet. Just entering the house, I saw Deha Saikia and Manjil Baruah dealing dao blows on my father. When I was about to shout, Manjil Baurah landed the ensanguined dao on my neck and said that he would cut me and my mother into pieces if we shout. At that time, my mother was in the kitchen. When Manjil entered inside the house after committing the incident, I went in a run and informed mother of the incident. When mother was about to come, I barred her and told them they would cut us too if we went there. So, we kept hidden in a corner of the kitchen. Around 6/6-30 p.m., we came out of the kitchen and found neither my father nor blood there. There was water at the place where father was lying. Then we went to Prafulla Borah's place and mother narrated the incident to him. Coming from that place mother kept on crying sitting on the verandah and I, too, remained so. Police came after that, but I do

not know who had informed them. Police searched our house. I did not know what police found inside the house. Police did not enquire me but they interrogated me the following day. And, I adduced evidence in the manner I have stated today. This witness is declared hostile at the request of the prosecution to cross"

7. From the deposition of Gyanashri Borthakur (PW9) it is seen that she had witnessed the crime taking place where both the appellants had actively participated in dealing dao blows on her father Pradip Borthakur. She also deposed that when she was about to raise alarm, the appellant No. 1 Manjil Baruah put the blood-stained dao on her neck and said that he would cut her and her mother into pieces. The fact that Gyanashri had witnessed the incident is corroborated by Ghana Kanta Neog (PW3), who in his testimony before the Court, stated that when he had come to the place of occurrence, he had called the deceased's elder daughter who told him that the appellants along with her mother Rani Borthakur had killed Pradip Borthakur and had thrown the dead body into a nearby ditch.

8. Basically and as noticed above, the conviction of the appellants was solely based on the testimony of Gyanashri (PW9). Whether her evidence before the Court was consistent or embellished or embroidered and whether conviction of the appellants could be based on it, is the core question requiring adjudication within the four corners of law. It needs to be seen as to whether the quality and credibility of the evidence brought on record by Gyanashri could lay the foundation for convicting the appellants i.e. Manjil Baurah and Deha Saikia.

9. From the available records, the statement of Gyanashri made under Section 164 Cr.P.C. is noticed. The incident had occurred on 24.09.2010 and the statement of Gyanashri under Section 164 Cr.P.C. was recorded immediately thereafter i.e. on 30.09.2010. For better appreciation, the said statement of Gyanashri (PW9) is reproduced here under:-

"Statement U/S 164 Cr.P.C.

(Ref :- Bihpuria P.S. Case No. 346/2010 u/s 302/34 I.P.C)

Aged about 10 years taken on oath or solemn affirmation under provision of the Indian Oaths Act X of 1878, before me R.A. Rahman, on the day of 30/09/2010.

My name is Gyanashri Bortahkur.

My father's name is Late Pradeep Borthakur

I am by caste : My house is at Mauza

Police Station: District:

I reside at present in: Sarjan Police Station: Bihpuria

District: Lakhimpur where I am a student of class-V

Q1. What is your name?

Ans:- Gyanashri Bortahkur

Q2. What is your father's name?

Ans:- Late Pradip Borthakur.

Q3. Which class do you read in?

Ans:- Class-V.

Q.4 Do you know the difference between telling the truth and telling lies?

Ans:- Yes, I do.

This is to certify that this child witness was asked several questions. She was able to answer them rationally and with intelligence.

Sd/- Illegible

30/9/2010

Around 4.30 p.m. on the day of the occurrence, coming from school and after cleaning my hands and feet when I was about to enter inside the house, I saw Manjil Baruah dealing a dao blow to her father in the room where sofas were kept. When I tried to scream, Manjil landed the dao on my neck and said, "Don't shout, or else, I would cut you into pieces." Deha Saikia was also present with Manjil. At that time, mother was working in the kitchen. Later, I told mother what had happened.

Sd/- Gyanashri Borthakur

Est. 7(1), 7(2)

Sd/- Illegible

7/7/2012

Dist. & Sess. Judge (FTC)

Lakhimpur, North Lakhimpur"

10. In her statement under Section 164 Cr.P.C., Gyanashri (PW9) stated that she saw the appellant no. 1 Manjil Baruah dealing a dao blow on her father. In so far as appellant no. 2 Deha Saikia is concerned, Gyanashri Bortahkur stated that Deha Saikia was present with Manjil. However, no over act was attributed to Deha Saikia in causing any injury to Pradip Borthakur. Tested against the statements made by Gyanashri under Section 164 Cr.P.C. with that of her testimony before the Court, it appears that her deposition of having seen Deha Saikia dealing dao blows on her father is an improved version. In so far as Manjil Baruah is concerned, the statements made by Gyanashri, whether under Section 161 Cr.P.C. or under Section 164 Cr.P.C. and/or before the Court, have remained

consistent.

11. To what extent the deposition of a witness can be relied upon and whether it is possible to separate the falsehood from the truth when evidence of the witness is not inextricably mixed-up, has been observed by the Apex Court in a catena of decisions while considering the applicability of the doctrine "falsus in uno, falsus in omnibus" in India. Ready reference can be made to the case of *Ranjit Singh v. State of Madhya Pradesh*, reported in (2011) 4 SCC 336. Applying the ratio and having regard to the evidence tendered by Gyanashri (PW9), it is possible to separate the grain from the chaff, the falsehood from the truth. Apparently, the imputations made against Deha Saikia before the Court is an improved version. No overt act on his part was attributed by the sole eye-witness in the Section 164 Cr.P.C. statement as having dealt four blows on Pradip Borthakur. The evidence of Gyanashri (PW9) is clearly embellished and embroidered in so far as the appellant no. 2 Deha Saikia is concerned.

12. Having regard to the above, this Court holds that the appellant no. 2 Deha Saikia is entitled to the benefit of doubt. Accordingly, this appeal stands partly allowed by interfering with the judgment dated 09.03.2015 passed by the learned Sessions Judge, North Lakhimpur in Sessions Case No. 24(NL)/2012 in so far as the conviction and sentence imposed upon Deha Saikia is concerned. As regards appellant no. 1 Manjil Baruah, his conviction and sentence imposed by the Court below stands affirmed. Having held thus, Deha Saikia be released forthwith, if not required to be detained in any other case.

Case records be sent back forthwith.