
(2017) 02 GAU CK 0010
In the Gauhati High Court
Case No : Criminal Appeal No. 59 of 2015

Md. Hasmat Ali	Vs	APPELLANT
State of Assam		RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

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

Citation : (2017) 172 AIC 630

Hon'ble Judges : Mr. Ajit Singh, C.J. and Mr. Achintya Malla Bujor Barua, J.

Bench : Division Bench

Advocate : Mr. H.R.A. Choudhury, Senior counsel assisted by Mr. I.H. Hazarika, Learned Counsel, for the Appellants; Mr. M. Phukan, Additional Public Prosecutor, for the Respondents

Final Decision : Allowed

Judgement

Ajit Singh, C.J.—Three appellants, namely, Hasmat Ali, Mst. Sajeda Begum and Hussain Ali have been convicted under Section 302/34 of the Indian Penal Code and sentenced to imprisonment for life and fine of Rs.2,000/- each with default stipulation. The trial court has however acquitted two co-accused, namely, Sahar and Babul of the same charge.

2. The victim of the incident was Monirul Haque, aged about 30 years. He was the husband of Sajeda.

3. According to the prosecution case, Monirul married Sajeda about 5 years ago from the date of occurrence. He was a driver by profession and a son was born out of the wedlock with Sajeda. Although at first they lived in a rented house, but later they shifted to a house constructed on the land of Hasmat-the father of Sajeda and father-in-law of Monirul. One day, when Monirul came home in the evening he saw Sajeda and Hussain in compromising position and when he objected and told Hasmat about it, both Sajeda and Hasmat assaulted him. Hasmat allegedly even hit Monirul with a rod on his head as a result of which he

had to take stitches. Monirul however did not lodge any complain to the police and only Rasikul Haque (PW-1) could come to know about the said incident. After about three months, on 25/10/2010, at about 7:30 p.m., when Monirul came home in the evening and was sitting with Ajijul (PW-16), Majid (PW-8) and Royal Islam (PW-9), he was called over phone by the appellants to their house. Thereafter, Hasmat came to Rasikul and Aminul (PW-2) and informed them that somebody had committed the murder of Monirul by hacking him on his head and neck with sharp edged weapon and his body was found on the bank of the river Manah. Ajijul, Majid, Royal, Afsar Ali (PW-11) etc. also heard about the death of Monirul and saw the dead body. Rasikul went to the bank of river Manah and saw the dead body of Monirul. Other villagers also went there coming to know about the death of Monirul. Rasikul then made Ejahar Exhibit-10 before Police Station Manikpur naming Sajeda, Hasmat and Sahar Ali @ CID.

4. In the meantime, Sub-Inspector Raghab Chandra Das (PW-24) was also informed over telephone that the dead body of Monirul was found. He therefore took up the investigation and went to the place of occurrence. There he prepared inquest report exhibit 1 of the dead body in the presence of witnesses. He then drew sketch map (Ext-13), recorded statements of witnesses, seized one dagger each from Sajeda's house in the presence of witness Hussain (PW-6) and Robiul (PW-12) and from Hussain's (appellant) house in presence of Royal (PW-9), Safiur (PW-10), Zakir (PW-13) and Robiul (PW-14) vide seizure lists Ext-4 and Ext-8, respectively. He also seized 3 Nokia handsets from the house of Hasmat vide seizure list Ext-9 in the presence of Afsar (PW-11), Kamir (PW-15) and Jeuti (PW-18). He even seized one handset from the possession of Afruja vide Exhibit-11 in the presence of Mahirum (PW-19), Matbar (PW-21), Hafizur (PW-22) and Nurul (PW-23). He also seized the handset of Hussain vide Ext-11, by which he called Monirul. He also got the inquest done over the dead body. He then sent the dead body of Monirul for Post-Mortem Examination.

5. Dr. Jahadur Rahman (PW-3) conducted the post mortem examination on the dead body of Monirul. He found seven (7) incised wounds over the neck, right shoulder, parietal region and over mid portion of head and opined that Monirul died due to hemorrhage and shock from multiple incised wounds caused by sharp cutting weapon which were all ante-mortem in nature. His post mortem examination report is exhibit 3.

6. On completion of investigation, charge-sheet against the appellants and two co-accused Babul Ali and Sahar Ali was filed for an offence under section 302/34 of Indian Penal Code vide Exhibit-14. It may be mentioned herein that Babul made extra-judicial confession before Nojrul (PW-4), Haider (PW-5), Hussain (PW-6), Majid (PW-8), Royal (PW-9) and Robiul (PW-12), but in presence of the police.

7. During trial, the appellants abjured their guilt and pleaded false implication. But the trial court relying upon the evidence adduced by the prosecution, convicted and sentenced the appellants as aforesaid. As mentioned above, the

trial court has acquitted Babul and Sahar.

8. It is argued on behalf of the appellants that in the absence of any eye witness, the trial court committed an illegality in convicting them under Section 302/34 of the Indian Penal Code. It has also been argued that the circumstantial evidence do not form the complete chain to connect the appellants with the murder of Monirul. The learned Additional Public Prosecutor has defended the conviction and sentence of the appellants.

9. Admittedly, the case of the prosecution is completely based on circumstantial evidence. And the main circumstance was that Sajeda was having illicit relation with Hussain and they were caught in compromising position by Monirul a few months ago and so he was called by the appellants over his mobile on the day of occurrence and together they committed his murder by using daggers and threw his body on the bank of river. Although, it is the evidence of Rasikul, Aminul and Haider (PW-5) that Sajeda had illicit relationship with Hussain (appellant), but the same is without any substance. Mother Dalima (PW-3) of Monirul in her evidence has not said anything about such relationship, although Nojrul (PW-4) claimed that she had told him about the relationship. Also Rasikul and Haider, in their police case diary statements, nowhere alleged that Monirul saw Sajeda in a compromising position with Hussain. Not only this, Aminul did not even mention about the illicit relation between Sajeda and Hussain in his statement recorded under Section 161 of the Code of Criminal Procedure. During the making of inquest report also by the Investigating Officer, Aminul and Haider did not reveal about such illicit relation though both of them were witnesses to the inquest report. Moreover, it is unbelievable that Sajeda would indulge in illicit relationship with Hussain to be found in compromising situation in her house itself and when reported about it, her father Hasmat would encourage it and assault Monirul. It is highly an improbable proposition that a father of a married daughter in an Indian society would allow her to carry illicit relationship with her paramour in the absence of her husband and would react indifferently when reported by his son-in-law. Even the evidence that he assaulted Monirul causing severe injuries for that reason is highly unbelievable in as much as the same was never reported to anyone not to even speak of the police by Monirul. There is hardly any evidence to even remotely suggest that Monirul underwent some medical treatment as a result of such injuries although the witnesses stoutly claimed that he had stitched injuries on his head. On the contrary he continued to stay with Sajeda in the same house on the land of his father-in-law (appellant-Hasmat) which is quite uncommon, unusual and unrealistic.

10. Although, Royal, Ajijur and Majid were there with Monirul when the phone call came to him on the date of occurrence, none of them has deposed that either of the appellants called him over phone in pursuance of their common design to commit his murder. Even the call records of the mobile number from which the call was purportedly made to him just before his death was not produced and proved before the court by the Investigating Officer Raghab. He

did not even seize the same although he sized three mobile handsets to link the appellants with the crime. This casts a serious doubt on the involvements of the appellants.

11. It is the evidence that daggers were found from the houses of Sajeda and Hussain. But the daggers were not sent for examination to the forensic laboratory to prove that they were stained with human blood. Mere seizure of daggers is not sufficient to link Sajeda and Hussain to the death of Monirul in absence of other convincing material against them for sufficient incrimination.

12. So far the evidence of Nojrul (PW-4), Haider (PW-5), Hussain (PW-6), Majid (PW-8), Royal (PW-9) and Robiul (PW-12) regarding extra-judicial confession made by Babul incriminating the appellants is concerned, the trial court rightly dismissed the same as the same was made in presence of police and as such there is no sufficient material against the appellants to rope them under the charges.

13. The chain of circumstances is not complete in the instance case and there is a missing link amongst the circumstances. Even the circumstances have not been proved beyond reasonable doubt. It has not been proved beyond reasonable doubt that Sajeda had an affair with Hussain and they were caught by Monirul. It has also not been proved that he was assaulted by Hasmad and he underwent medical treatment. None of the witnesses deposed that the appellants called him over phone on the date of occurrence just before he was murdered and none of the witnesses said that he was last seen with either of the appellants. Merely because, Sajeda was found taking out mobile, wallets etc. from the dead body of Monirul, is not sufficient to link her to the crime as it is very usual to remove those valuables from the dead body of a relative before he is handed over to the police and sent for post-mortem examination. There was no apparent reason to suggest that Sajeda had an affair with Hussain in as much as nothing in this regard was referred to any village settlement forum which is a very common practise in this region when such matters do erupt. Daggers are common household articles and without the stain of blood being tested by experts connecting to the deceased, there is hardly any offence made out for having such a dagger in any one's house. Also, there is no evidence to show that appellants were last seen with Monirul or at or near the place, where his body was found. As such, there remains a serious doubt regarding the involvement of the appellants in the crime and hence the appellants are entitled for the benefit of doubt.

14. We, therefore, having regard to the above, find ourselves in complete disagreement with the finding of the trial court that appellants were the perpetrators of the crime.

15. We accordingly set aside the conviction and sentence of the appellants. They be set at liberty forthwith, if not wanted in any other case(s).

16. The appeal is allowed.