
(2019) 05 GAU CK 0115
In the Gauhati High Court
Case No : Criminal Appeal No. 155 Of 2017

Md Najrul Islam	Vs	APPELLANT
State Of Assam And Anr		RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302
Code Of Criminal Procedure, 1973 — Section 161, 313
Evidence Act, 1872 — Section 106

Citation : (2019) 05 GAU CK 0115

Hon'ble Judges : Achintya Malla Bujor Barua, J; Nani Tagia, J

Bench : Division Bench

Advocate : K Dutta

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Mr. K Munir, learned counsel for the appellant. Also heard Ms. B Bhuyan, learned Additional Public Prosecutor, Assam.
2. Office note dated 14.07.2017 states that A/D card in respect of informant/respondent No.2 had been received back along with his signature and as such service is complete. None appears for the informant/respondent No.2.
3. An ejahar was lodged by one Ajijur Rahman on 14.11.2016 before the Officer-in-Charge, Dhekiajuli Police Station, inter alia, stating that his sister Kamala Begum was married with the accused Nazrul Islam and for the last three years she was subjected to both physical and mental torture by her mother-in-law, father-in-law and her husband upon demand of dowry. It was alleged that on 14.11.2006 at 8 A.M., on being instructed by her father-in-law and mother-in-law, her husband Nazrul Islam had assaulted her with a lathi and being not satisfied they had instructed him to kill her. Thereafter, on fearing for her life, the deceased Kamala rushed out to a nearby house but her husband had given her a

blow with an axe on her head resulting in her death.

4. PW-2, Ajijur Rahman, the informant in his deposition had stated that he had learnt about the incident from his mother as well as from the other villagers that the accused had dealt an axe blow on the head of his sister. PW-1, the mother in her deposition had stated that one day the deceased Kamala Begum came to her house and stated that if the money was not paid she would be killed. Accordingly, the PW-1 accompanied the deceased Kamala Begum to the house of her husband and stayed there along with her daughter. In the evening the accused appellant, Nazrul came and asked as to whether the money had been paid to which the deceased Kamala replied that it was not paid. It is further stated by PW-1 that on the next morning the deceased Kamala was assaulted by the accused Nazrul in front of her and the accused had asked her to leave his house along with the PW-1. Upon being assaulted the deceased Kamala ran away and came out of her house, when her mother-in-law and father-in-law prevented her from coming out and called accused Nazrul and asked him to bring an axe. It is stated that accordingly accused Nazrul brought an axe and gave a blow with it causing injury on the head of the deceased Kamala. She immediately fell down and blood was oozing out from her head and she died on the spot.

5. The deposition of PW-1 in her examination-in-chief was relied upon by the prosecution to present its case that the act of causing death upon the deceased had been witnessed by the PW-1. In the judgment of the learned Sessions Judge, Sonitpur convicting the accused appellant under Section 302 IPC, the evidence of PW-1 in her examination-in-chief was wholly relied upon to make it a case where there was an eye witness to the occurrence.

In cross examination, the PW-1 on a suggestion had stated that it was not a fact that she had not stated before the police that she accompanied Kamala to the house of the appellant and stayed there and in the evening time the accused came and asked whether the money was paid or not. To a suggestion, she further stated that it was not a fact that she did not state before the police that on the next morning, her daughter Kamala was assaulted by the accused appellant Nazrul in front of her and was asked to leave the house. She also stated on a suggestion that it was not a fact that she did not state before the police that she had seen the accused assaulting the deceased Kamala with an axe.

6. PW-12, the Investigating Officer in his cross examination had stated that the PW-1 had not stated before him that she had accompanied Kamala Begum to the house of the accused appellant, Nazrul Islam and that she stayed with her daughter in the house of her husband and in the evening the accused Nazrul came and asked whether money was paid or not to which Kamala replied that it was not paid.

PW-12 also stated in his cross examination that the PW-1 had not stated before him that on the next morning her deceased daughter was assaulted by the

accused Nazrul in front of her and she was asked to leave her house. He further stated that the PW-1 had not stated before him that when the mother-in-law and father-in-law prevented Kamala from coming out and had called accused Nazrul and asked him to bring an axe, Nazrul had bought an axe and gave a blow with it causing injury on the head of the deceased Kamala.

7. In order to ascertain as to whether the PW-1 had stated in her statement under Section 161 Cr.P.C., in the manner as she had stated in her examination-in-chief, we have verified the statement of PW-1 made under Section 161 Cr.P.C. Under 161 Cr.P.C., the PW-1 had stated that on 14.11.2006, the deceased Kamala Begum had desired to come to the house of her parents, but the accused Nazrul Islam had hit her with an axe on her head causing death to her. In the statement under Section 161 Cr.P.C. PW-1, no where mentions that the PW-1 on the previous day had accompanied the deceased Kamala to the house of her husband and stayed there overnight and on the next morning had witnessed the occurrence of the accused having hit the deceased with an axe on her head.

8. In view of the aforesaid materials on record, we are of the view that the deposition of the PW-1 in her examination-in-chief that she had seen the accused appellant hitting the deceased Kamala with an axe on her head and thereby causing her death is unacceptable.

9. Accordingly, the contention of the prosecution that the act of causing death on the deceased by the accused Nazrul was witnessed by the PW-1 is unacceptable.

10. We have also examined whether there is any further circumstantial evidence which may lead to the accused having dealt the fatal blow on the head of the deceased. For the purpose, we have examined the statement of the accused under Section 313 Cr.P.C., wherein he had taken a specific stand that at the time of death, he had heard about the occurrence when he was in his shop and when he returned home he saw his wife lying there dead within their house.

11. In view of such statement by the accused Nazrul in his statement under Section 313 Cr.P.C., we find that there is an acceptable explanation given by the accused as regards the possibility of his involvement in the act of death being caused to the deceased, inasmuch as, the death was caused within the premises of the house of the accused himself.

12. In view of such explanation, we are of the view that even the provisions of Section 106 of the Evidence Act, 1872 cannot be invoked in the present case so as to point guilt towards the appellant. Apart from the evidence as has been discussed above, we are of the view that the other evidences led are not of much relevance for arriving at a decision.

13. Accordingly, we are of the view that the prosecution had failed to prove its case beyond all reasonable doubt that it is the accused appellant, who had given the fatal blow with an axe on the head of the deceased resulting in her death.

14. In view of the above, the judgment and order dated 20.02.2017 of the

learned Sessions Judge, Sonitpur in Sessions Case No.28/2007 convicting the accused appellant under Section 302 of the IPC and sentencing him to undergo rigorous imprisonment for life and a fine of Rs.20,000/- in default thereof a further simple imprisonment for 3(three) months is accordingly set aside.

15. Accordingly, the accused is set at liberty provided he is not required in connection with any other case.

16. Appeal is allowed.

17. Send back the LCR.