
(2007) 06 GAU CK 0021
In the Gauhati High Court

Nur Islam and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 04-06-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 34

Citation : (2008) 4 GLT 325

Hon'ble Judges : Brojendra Prasad Katakey, J;Aftab H. Saikia, J

Bench : Division Bench

Judgement

B.P. Katakey, J.—On the basis of the First Information Report (Exhibit-1) lodged by Md. Abdul Kalam (PW-1), the father of the deceased Mohammad Alion 6.4.1992 alleging that on that day at about 6 p.m. while his son was returning home from Laluk Bazar along with co-villagers Abdul Kadir (PW-4) and Md. Javed Ali (died before commencement of the trial), Md. Nurul Haque, Md. Ajin Ali, Md. Nur Islam, Md. Hasmat and Md. Hossein Ali armed with dao, lathi etc. waylaid him near the residence of Kabil on Kehutoli road and inflicted injuries on his head and abdomen, causing grievous injuries resulting in his death, Bihpuria P.S. Case No. 122/1992 under Sections 147/148/149/302, IPC, was registered. The investigating agency, pursuant to such registration of the police case started investigation and apprehend Nurul Haque, Hasmat and Hossein Ali but could not apprehend the present appellants, namely Md. Nur Islam, Ajin Ali and Saidul, as they were avoiding arrest and they were declared as absconders till their arrest on 14.3.2000. The trial against Md. Nurul Haque, Hasmat and Hossain Ali commenced after framing of charges under Sections 302/34, IPC, and the learned Sessions Judge, North Lakhimpur vide judgment and order dated 29.3.2000 while convicted Nurul Haque u/s 302, IPC, having found him guilty for murder of Mohammad Ali, acquitted other persons, namely Md. Hasmat and Hossain Ali. The said judgment of the conviction was carried to this Court by way of Criminal Appeal No. 192(J)/1997, which was upheld by a Division Bench of this Court on 20.8.1999. On being apprehended, charges were framed against

the present appellants by the learned Sessions Judge vide order dated 14.3.2000 under Sections 302/34, IPC, which when read over, the appellants denied the same and claimed to be tried. Hence, the trial commenced against the appellants.

2. During the course of trial, the prosecution in order to prove the charges level against them examined 10 (ten) witnesses, which includes the first informant Abdul Kalam as PW-1, two eye-witnesses, namely Abdul Kader as PW-4 and Multan Ali @ Mamtus as PW-5, the Investigating Officer as PW-6 and Dr. Hem Ch. Baruah, who conducted the autopsy over the dead body of Mohammad Ali as PW-7, apart from five other witnesses, namely Samad Ali, Ainuddin, Gobinda Baruah, Swad Ali and Shri Apurba Kalita. On completion of the examination of the prosecution witnesses, the accused persons were examined u/s 313 Cr.P.C. The learned Sessions Judge upon appreciation of the evidences available on record convicted the appellants under Sections 302/34, IPC vide judgment and order dated 18.11.2000 and sentenced them to undergo Rigorous Imprisonment for life and to pay a fine of Rs. 5,000/- each, in default to undergo Rigorous Imprisonment for a period of 6 (six) months. Hence, the present appeals have been preferred by the appellants from jail separately. Since the appeals are arising out of the common judgment of conviction passed by the learned Sessions Judge, all the three appeals have been taken up for hearing and disposal together.

3. We have heard Mr. B. Pathak, the learned Amicus Curiae appearing in Criminal Appeal No. 15(J)/2001, Mrs. A. Devi, the learned Amicus Curiae appearing in Criminal Appeal No. 14(J)/2001 and Mr. M.K. Boro, the learned Amicus Curiae appearing in Criminal Appeal No. 24(J)/2001. We have also heard Mr. K. C. Mahanta, the learned PP, Assam.

4. Mr. Pathak, the learned Amicus Curiae appearing on behalf of the appellant in Criminal Appeal No. 15(J)/2001 referring to the deposition of PW-4 and PW-5 as well as that of PW-1, the first informant, and PW-3, the father of the PW-5, has submitted that the PW-4, who is one of the two eye-witnesses examined by the prosecution has not at all implicated the appellant, though implicated Nurul and Ajin Ali (appellant in Criminal Appeal No. 24(J)/2001) but the PW-5 has implicated Saidul by deposing before this Court that he came to the place and struck Mohammad without elaborating how on and which part of the body and by means of what weapon Saidul has struck Mohammad. It has further been submitted by the learned Amicus Curiae that the version of PW-5 implicating Saidul is not at all believable, as Saidul has not been implicated with the occurrence, by PW-4, who is also an eye-witness. The version of PW-5 has also not been corroborated by any other witness including the FIR lodged by PW-1, which was admittedly lodged one hour after the occurrence. In the FIR even there is no mention about the presence of PW-5 at the place of occurrence. According to the learned Amicus Curiae, PW-1, Who in the FIR has stated that only Abdul Kader and Javed Ali saw the occurrence, has however, tried to improve his version by deposing that he was informed by Ainuddin (PW-3),

Multan (PW-5) and Late Jabbar Ali that Saidul and Nur Islam apart from Ajin and Nurul killed his father by striking him with dao and sword. According to the learned Counsel, such version of PW-1 in the absence of any mention in that respect in the FIR lodged after one hour from the time of occurrence, is not at all believable, more so, when the version of PW-1 has not been corroborated by PW-3 the father of PW-5, who deposed during cross-examination that PW-5 has not stated the name of Saidul inflicting any injury on the person of Mohammad Ali. Therefore, according to the learned. Amicus Curiae, there is no convincing evidence to hold Saidul guilty of the offence under Sections 302/34, IPC, as his presence in the place of occurrence, became doubtful. It has further been submitted that Saidul cannot also be convicted in aid of Section 34, IPC as his presence in the place of occurrence and participation in any criminal act in furtherance of any common intention has not been able to prove by the prosecution.

5. Mrs. Devi, the learned Amicus Curiae appearing for Md. Nur Islam in Criminal Appeal No. 14(J)/2001 has submitted that though PW-4, one of the eye-witness has implicated him in the commission of the offence by saying that Nur Islam and Ajin Ali struck Mohammad Ali, PW-5, who is also an eye-witness present at the place of occurrence, did not say anything implicating Nur Islam to the commission of the offence, thereby making the version of PW-4 in so far as it relates to implicating Nur Islam, doubtful. Referring to the deposition of PW-1, the learned Amicus Curiae has further submitted that though P W-1 in his deposition has stated that Ainuddin, Multan and Late Jabbar Ali informed him that Nur Islam and others inflicted injury on the person Mohammad Ali, Ainuddin, who has been examined as PW-3 and Multan, who has been examined as P W-5, have not stated that they informed P W-1 implicating any one to the commission of the offence and on the other hand, Ainuddin specifically stated that he did not tell PW-1 the names any of the accused persons. The learned Amicus, Curiae has also argued that even the Investigating Officer did not find enough material against Nur Islam as well as Saidul as during cross-examination, the Investigating Officer has stated that he has submitted the charge-sheet against Nur Islam and Saidul though there were not enough evidence against them.

6. Mr. M.K. Boro, the learned Amicus Curiae appearing for Ajin Ali, the appellant in Criminal Appeal No.24(J)/2001 has submitted that there is no creditable evidence on record to convict Ajin Ali for the commission of the offence as alleged. According to the learned Counsel, the evidence of PW-4 and PW-5 cannot be relied upon for the purpose of conviction, as they do not corroborate each other.

7. Mr. Mahanta, the learned P.P., on the other hand, has submitted that there are enough materials to convict the appellants in all the three appeals for commission of murder of Mohammad Ali. Referring to the deposition of PW-4, it has been submitted by the learned P.P. that the said witness has specifically stated about the involvement of Nur Islam as well as Ajin, though not stated

anything about the involvement of Saidul, however, the PW-5, who is another eye-witness to the occurrence has implicated Saidul to the commission of offence. It has further been submitted by the learned P.P. that PW-1, the informant, who lodged the FIR has also supported the version of the PW-4 and PW-5 by deposing before the Court that he was informed by Ainuddin and Multan (PW-3 and PW-5 respectively) about the involvement of all the appellants to the commission of crime, and as such, the learned Trial Court has rightly convicted the appellants under Sections 302/34, IPC.

8. We have perused the evidences on record. PW-4 and PW-5 are admittedly witnesses to the occurrence. PW-4 though in clear term has stated that Ajin Ali and Nurul Haque stabbed Mohammad AH with daggers, this witness has not at all implicated Saidul. This witness, has, however, stated that Ajin Ali struck Mohammad Ali with spades. Though this witness was cross-examined by the defence, no contradiction could be brought out so as to disbelieve his statement regarding the involvements of Ajin and Nurul Haque in the commission of offence, who has specifically stated that Ajin inflicted blows with dagger as well as the spades on the person of Mohammad Ali. Such version of PW-4 has been corroborated by the other witnesses. PW-5, who has also stated in his evidence that Ajin stood behind Mohammad and struck him on the head with a dagger. PW-5 though was cross-examined by Ajin Ali, no material contradiction could be brought out. The medical evidence adduced by PW-7 duly supported the prosecution version relating to the injuries caused by the dagger and the spade. The Doctor, who has been examined as PW-7, in his deposition has narrated the injuries found on the person of Mohammad Ali, as follows:

The injuries on the chest:

1. One penetrating wound right joint axillary area affecting flora and lungs. There is a sharp cut wound 3"cm. Length, 1" Breadth, 1" depth at the lower part of the right side of the chest. Floral cavity contained blood clot.

Injuries is the abdomen:

There is 3 penetrating wounds 1" on the right and too on the left side of the abdomen at the level of the arubelika the amentum (abdominal contents) coming out through the right side of the abdomen peritoneum is full of blood (membrane covering the instantine) stomach is torn as result of the injuries on this abdomen, the full materials of the stomach coming out.

Injuries on the head and scalp:

This is a sharp cut injury is a right temporal side joint lateral of the midline which extended from the eye from of the occipital area about 6"cm. Length cutting the brain matter, blood clot present in the brain.

A sharp cut wound on the face right side size 1" in length x 1/2 breadth x 1/2 in depth.

There is a sharp cut wound joint above the elbow, 3" in length x 1/2 breadth x 1/2 in depth oblique in direction.

There is a sharp cut wound fast below the left elbow oblique in direction size 3" x 1" x V," cutting the left radius bone.

There is a sharp cut wound just above the left elbow joint size 2" x 1/2" x 1/2".

9. From the aforesaid discussion of the evidences on record there is no manner of doubt about the involvement of Ajin Ali and about inflicting dagger and spade blows on Mohammad Ali, which resulted in the death of Mohammad Ali. Hence, in our view, Ajin Ali, the appellant in Criminal Appeal No. 24(J)/2001 has been rightly convicted by the learned Sessions Judge under Sections 302/34, IPC.

10. We shall now proceed to the discussion the evidences on record relating to Saidul and Nur Islam. PW-4 though has implicated Nur Islam to the commission of offence the said version has not been supported by P W-5. The version of PW-1 about his knowledge relating to the involvement of Nur as well as of Saidul from Ainuddin (PW-3) and Multan (P W-5) is also not believable because of the fact that Ainuddin, during cross-examination, has specifically stated that he did not inform PW-1 implicating any person. Further Multan, in his evidence has stated that he never informed PW-1, implicating either Nur or Saidul to the commission of offence. PW.-4, who is the eye-witness to the occurrence has also not at all implicated Saidul to the offence alleged though P W-5 has said that Saidul struck the deceased. This witness, however, has not stated now Saidul was involved and by what and in which part of the body of Mohammad, he inflicted injury. That apart, the PW-3, the father of PW-5, who according to PW-5 reported the incident to PW-3, has also stated that PW-5 never mentioned the name of Saidul. The version of PW-4 and PW-5 relating to the involvement of Saidul and Nur became doubtful in view of the aforesaid contradiction and as admittedly both these two witnesses were present at the place of occurrence. Both the witnesses have not named Nurul and Saidul. The version of PW-1 relating to the information he received from Ainuddin (PW-3) and Multan (PW-5) implication and Saidul to the commission of offence is also not believable, as Ainuddin and Multan in their deposition before the Court have not supported the version of P W-1. The involvement of Nur and Saidul in the commission of offence became, therefore, doubtful.

11. In view of the aforesaid discussion, we are of the view that it creates doubt in the mind of the Court about the involvement of Nur Islam and Saidul in commission of offence, hence, they are entitled to the benefit of doubt. The prosecution has failed to prove the involvement of Nur Islam and Saidul in the commission of offence beyond all reasonable doubt and hence the appellants Nur Islam and Saidul are acquitted as they are entitled to benefit of doubt. They are, therefore, set at liberty forthwith, if not wanted in any other case.

12. The appeals being Criminal Appeal Nos. 14(J)/2001 and 15(J)/2001 stand allowed. The conviction against these appellants in those appeals is set aside,

while confirming the judgment of conviction against Ajin Ali, appellant in Criminal Appeal No. 24(J)/2001.

13. The Criminal Appeal No. 24(J)/2001 is accordingly dismissed.

14. Registry is directed to send down the lower Court's record.

15. Before parting with the record we place on record our appreciation to the services rendered by Mr. Pathak, Mrs. Devi and Mr. Boro, the learned Amicus Curiae. The learned Amicus Curiae shall be entitled to Rs. 2,500/- each, for the services rendered by them.