
(2009) 10 GAU CK 0041
In the Gauhati High Court

Pawan Pantanti

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 23-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2010) 2 GLR 383

Hon'ble Judges : Ranjan Gogoi, J;Biplab Kumar Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.K. Sharma, J.—This appeal is directed against the judgment of conviction and sentence passed by the learned Additional District and Sessions Judge No. 2, Tinsukia in Sessions Case No. 81(T)/2002 convicting the accused appellant u/s 302, IPC and sentencing him to undergo RI for life and to pay a fine of Rs. 2,000 and in default, R1 for another two months.

2. An FIR was lodged on 13.11.2000 by PW3 with the Officer-in-charge of Tinsukia Police Station to the effect that on the same day at about 6.30 P.M., some unknown persons killed the deceased by affecting injuries on his face and neck with sharp weapon. As per the said FIR, the dead body was found lying in a drain near Balugada Cross Road. On the basis of the said FIR, Tinsukia PS case No. 410/2000 was registered u/s 302, IPC. After investigation etc., the accused appellant was charged of committing an offence punishable u/s 302, IPC. The case being exclusively tribal by the Sessions Court, by order dated 18.6.2002 passed by the learned Judicial Magistrate 2nd Class, Tinsukia in GR case No. 979/2000, the case was committed to the said court.

3. The learned Additional Sessions Judge No. 2, Tinsukia, tried the case as sessions case No. 81(T)/2002. The prosecution examined altogether 8(eight) witnesses and the accused appellant examined none.

4. There is no eye witness to the incident of murder of the deceased. However, the learned trial court has convicted the accused appellant primarily on the basis of the purported incriminating materials against the accused appellant, as discussed in the judgment. The said incriminating materials are the statement of the accused before the Police and the seizure of a Dao, purportedly at his instance.

5. Let us now examine the evidence on record. PW1 in his deposition has stated that the occurrence took place in the month of November, 2000. At the time of occurrence, he was busy in his shop. At about 6.30/7 P.M., he having heard a commotion at the cross road near the shop, came out and saw the deceased lying injured in a drain. Thereafter he went to the Police Station and informed the police about the occurrence.

6. PW2 in his statement while narrating the incident has stated that he saw a person fleeing from the place of occurrence taking a Dao in his hand. However, he could not identify as to who the person was. He has further stated that the Police apprehended the accused appellant and seized a Dao from his house. In his cross-examination, he categorically stated that he did not know as to who the person was fleeing from the place of occurrence with a Dao. As regards the seizure of the Dao, he has stated that he did not see the seizure of the same. He also stated that he did not know the type of the Dao which the police had brought from the house of the accused appellant.

7. PW3 is the first informant. He in his deposition has stated about the incident. As per his statement, it was on 13.11.2000 at about 6 P.M., one Jagannath Gogoi informed him that the deceased had been lying dead in a drain. Going there, he found the deceased lying dead. Thereafter, he lodged the FIR. In his cross-examination, he has stated that he had come to know that the accused had killed the deceased from one Shri Jitmoni Das, mother of one Gerori. He has also stated that on the previous day, the accused had chased the deceased to assault him. He, however, admitted that he did not mention about these things in the FIR.

8. PW4 also stated that the occurrence took place in the year 2000. Like others, he also heard that the deceased had been murdered. Going to the place of occurrence, he could see that the deceased was lying dead in the drain. According to this witness, the police had come to the place of occurrence and prepared some papers. Letter on, they came again and took away the accused appellant. According to him, he was also taken to the Police Station and in the P.S., the accused appellant had confessed that he had killed the deceased with a Dao. As per his statement, the accused had given a Dao to the police which they seized in his presence.

9. In his cross-examination, he has stated that he did not see the killing of the deceased. The police had shown him the seized dao. However, he did not see as to where from the police had recovered the same. He further stated that he did

not see the seized dao in the court.

10. The statement of PW5 is only to the effect that some two years back, he had heard that the deceased was killed. He did not go to the place of occurrence.

11. PW6 in his deposition has stated that he knew nothing about the occurrence. He had gone to the Police Station and the police told him about the seizure of a Dao and to put a signature in the seizure list. He did not see the Dao and also as to from whom the Dao was seized.

12. PW7 is the Doctor who conducted the Post Mortem examination. Ext. 4 is the report. As per his opinion, the cause of death was due to combined effect of coma and shock resulting from the injuries described. The injuries were ante mortem and caused by heavy sharp cutting weapon and homicidal in nature. Approximate time since death was 12 to 20 hours.

13. PW8 is the Investigating Officer, who in his deposition stated about his visit to the place of occurrence on receipt of the FIR and entrustment of the case to him. He in his deposition stated that during the investigation he could come to know that it was the accused appellant who had committed the offence. Accordingly, he arrested him. He in his deposition has further stated that the deceased had confessed before him and one Dao was recovered at his instance. Ext.7 is the statement of accused appellant recorded u/s 161, Cr.PC. However, no statement u/s 164, Cr.PC was recorded.

14. He in his cross-examination, stated that it was on the basis of a secret information he could come to know that it was the accused appellant who had committed the offence. He has admitted that there is no mention in the Case Diary about the secret information. According to him, the accused appellant had brought out the Dao from under his bed. He has admitted that except the recovery of the weapon and the admission of the accused before him, there was no material to connect the accused appellant for the crime.

15. The accused appellant was examined u/s 313, Cr.PC. To the specific question about his confession and production of the Dao, the accused appellant denied the same and described the allegations as false.

16. It is on the basis of the above evidence, the learned Addl. Sessions Judge has convicted the accused appellant by the impugned judgment and order dated 3.4.2003. As already noted above, the conviction of the accused appellant is primarily on the basis of the purported incriminating materials against him. The learned trial court on the basis of the discussions made on the purported information furnished by the accused himself leading to the discovery of the weapon in question, has observed that the same is capable of two interpretations, i.e., (1) He was the person who had hidden the weapon or (2) he had the knowledge of the place where it was hidden. The learned trial court has relied upon the evidence of the I.O., i.e., PW8 and the PW4. As per their statements, the accused appellant had confessed before the Police about the

offence committed by him and that he had handed over the Dao from under his bed. It is solely on the basis of such statement, the learned that court has convicted the accused appellant. In our considered view, the learned trial court could not have convicted the accused appellant solely on the basis of the said statements when the chain of events was not complete.

17. At the first instance, the purported statement of confession made by the accused appellant before the police is of no consequence. Secondly, there is nothing in the statements of PW4 and PW8 that the Dao which, the accused appellant had purportedly produced was the weapon used to commit the crime. Even if we believe that the accused appellant had produced a Dao, the conviction could not be sustained solely on the basis of the same. Further the seized Dao was also not produced before the trial court during the proceeding.

18. While it is true that a conviction can be sustained on the basis of circumstantial evidence but such circumstances must be such that no second opinion other than conviction of the accused is possible. It is not a case of establishing the guilt of the accused appellant beyond all reasonable doubt. As observed above, it will be unsafe to convict the accused appellant solely on the basis of the statements made by him u/s 161, Cr.PC and the purported production of the dao by him, without anything more. The statement u/s 161, Cr.PC cannot be linked to the purported production of the Dao by the accused appellant. To establish the guilt of the accused appellant on the basis of circumstantial evidence, it was incumbent on the part of the prosecution to complete the chain of events leading to the murder of the deceased, which it has miserably failed. It will be too dangerous to convict an accused solely on the basis of production of a Dao coupled with the statement u/s 161, Cr.PC, without anything more. In a case like this where there is no eye witness, the prosecution ought to have led evidence so as to complete the chain of events leading to the death of the deceased and in the said chain of events, the involvement of the accused appellant ought to have been established.

19. PW3 in his deposition has stated that he could come to know that, the accused had killed the deceased from one Jitmoni Das but said Jitmoni was not examined by the prosecution. It was in the Police Station in which the accused appellant had made the confessional statement in presence of PW4 and two other witnesses. If such confessional statement is not admissible, then certainly his statement regarding production of the Dao from under his bed without anything, more, also cannot lead to his conviction.

20. As noted above, charges can be proved on the basis of circumstantial evidence on which Mr. Mahanta, the learned P.P. has much emphasised. However, in such a case, the prosecution must prove that within all human probabilities, the act must have been done by the accused, which in the instant case is absolutely missing. The prosecution has failed to lead cogent/firm, believable and credible evidence. Except the purported statement of the accused appellant before the police, there is no other evidence to hold that there is a complete

chain of events as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. It will be too much to say that because of the statement of the accused made before the police coupled with testimony of PW4, the circumstances from which the conclusion of guilt is to be drawn have been established and such circumstances are complete and that there is no gap in the chain of evidence.

21. As noted above, the learned trial court has based the conviction of the accused appellant on the purported incriminating circumstances against him, without, however, focusing on the most vital aspect of the matter as to whether such incriminating circumstances have been clearly established by reliable and clinching evidence. It cannot be said to be a case of proved circumstances forming a chain of events from which the only irresistible conclusion which could be drawn is the guilt of the accused. Even assuming that the information furnished by the accused appellant led to the discovery of *dao*, that by itself cannot be the ground of conviction. At best the same could be the ground of foundation of the prosecution case. It is only one link of the chain of proof but the other links forming the complete chain are absolutely missing and the prosecution has miserably failed to forge the same.

22. For all the aforesaid reasons, we find sufficient force in the submission of Mr. P.K. Talukdar, learned amicus curiae and cannot accept the submissions made by Mr. K.C. Mahanta, learned P.P., Assam to sustain the conviction. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence dated 3.4.2003 passed by the learned Additional Sessions Judge No. 2, Tinsukia in Sessions Case No. 81(T)/2002 is set aside and quashed. Accused appellant shall be set at liberty forthwith if not wanted in connection with any other case.

23. Mr. P.K. Talukdar, learned amicus curiae will be entitled to two days' fee @ Rs. 2,500 per day.

24. Let the LCR be sent down along with a copy of this judgment immediately.