
(2016) 08 GAU CK 0078
In the Gauhati High Court
Case No : Criminal Appeal No. 95 (J) of 2013

Poresh Koya

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 08-08-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 166 AIC 643

Hon'ble Judges : Ajit Singh, CJ. and N. Chaudhury, J.

Bench : Division Bench

Advocate : Mr. Zahangir Hussain, learned Amicus Curiae, for the Appellant; Mr. K.A. Mazumdar, learned Additional Public Prosecutor, Assam, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Singh, C.J.—The sole appellant Poresh Koya has been convicted under Section 302 of Indian Penal Code and sentenced to imprisonment for life and fine of Rs. 5,000/- with default stipulation.

2. The victim of the incident was Bidyadhar Mirdha, aged about 35 years.

3. One Moniram Kumar (PW 1) had suffered sprain in his leg. On 16.1.2008 he therefore called Bidyadhar to his house to do massage for getting relief from pain. And at about 12.30 hours, when Moniram and Bidyadhar were having tea in the courtyard of former, the appellant suddenly came there with a wooden baton and dealt one blow with it from behind on the head of Bidyadhar. Bidyadhar, on receiving the fatal blow on his head, fell down and died on the spot. The appellant then dropped the baton there and fled. Moniram immediately informed Sandhya Mirdha (PW-2), wife of Bidyadhar, through a local boy. Sandhya, on receiving the information, rushed to the place of occurrence and saw Bidyadhar lying dead. Thereafter she promptly made the ejahar exhibit 3 at Police Station Haluwating, District Sivasagar. Haren Gowla, a personnel of Village Defence Party, wrote the ejahar on her behalf. The police, on reaching the spot, made the

inquest report exhibit 1 and seized the wooden baton.

4. The post-mortem examination on the dead body of Bidyadhar was conducted by Dr. Nirmal Chutia (PW-8). He found a large lacerated wound on the back and left side of head with a large fracture at occipital temporal skull. According to Dr. Nirmal Chutia, cause of death of Bidyadhar was due to massive head injury, which was ante mortem in nature.

5. During the trial, the appellant abjured his guilt and pleaded false implication. He, however, did not examine any witness in defence. It is to be noted that after the incident, he even absconded and charge sheet was filed showing him as an absconder. He could be arrested on 4.5.2012 i.e. after more than 4? years.

6. The trial court mainly relying on the evidence of eye witness Moniram and post-mortem examination report, convicted and sentenced the appellant as aforesaid.

7. Moniram is an eye witness to the incident. He has categorically testified against the appellant that while he and Bidyadhar were having tea in the courtyard after massage, the appellant suddenly came with a wooden baton and dealt one blow on the head of Bidyadhar with it from behind. According to the evidence of Moniram, after receiving the blow on head, Bidyadhar died on the spot; whereas the appellant fled after dropping the wooden baton there. Moniram then sent the information to Sandhya, who came to the place of occurrence and saw Bidyadhar lying dead. Moniram has stood firm in his evidence. He emphatically denied the suggestion of appellant that incident took place on a sudden quarrel after consuming liquor. The evidence of Moniram is fully corroborated by the post-mortem examination report. As deposed by Moniram, Dr. Nirmal Chutia found a large lacerated fracture on the back side of head of Bidyadhar. Also no trace of liquor was found in the body of Bidyadhar.

8. Sandhya is an uneducated small employee in the Tea Garden. She has honestly deposed that on receiving the information, she rushed to the spot and after seeing the dead body of her husband Bidyadhar, she lodged the ejahar at Police Station Haluwating, which was written by Haren Gowla, a personnel of Village Defence Party, on her behalf. The evidence of this witness is natural and trustworthy. She in her prompt ejahar/First Information Report has categorically named appellant as the assailant of Bidyadhar.

9. On scanning the evidence of Moniram, we find his evidence to be truthful and fully reliable. The trial court has rightly appreciated the evidence in convicting the appellant. No ground for interference is called for.

10. The appeal has no merit and is accordingly dismissed.