

(2010) 11 GAU CK 0020

In the Gauhati High Court

Case No : Criminal Appeal (J) No. 19 of 2005

Rabindra Debatrata and Others

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15, 15(1), 16, 2, 4

Penal Code, 1860 (IPC) — Section 302, 324, 326, 34, 447

Citation : (2011) 1 GLT 414

Hon'ble Judges : I.A. Ansari, J;C.R. Sharma, J

Bench : Division Bench

Advocate : H. Debnath, for the Appellant; A. Ghosh, Addl. P.P., for the Respondent

Judgement

C.R. Sarma, J.—The judgment and order, dated 25.01.2005, passed by the learned Sessions Judge, North Tripura, Kailashahar, in Sessions Trial Case No. 37(NT/K)/2004, is in challenge in this appeal. The Appellants, namely, (1) Sri Rabindra Debatrata, (2) Sri Hari Sankar Debatrata, (3) Sri Harish Chandra Debatrata, (4) Sri Ruparaj Purakayastha and (5) Sri Nishan Purakayastha @ Ishan Purakayastha (hereinafter called the Appellants), were tried in the said case, under Sections 448, 324 and 302, read with Section 34 of the Indian Penal Code (hereinafter called "IPC") and, they were convicted and sentenced to suffer imprisonment for life and pay fine of Rs. 5,000/- each for their conviction u/s 302 read with Section 34 IPC and suffer rigorous imprisonment for one year for their conviction u/s 324 IPC. Appellants Sri Hari Sankar Debatrata, Sri Harish Chandra Debatrata, Sri Ruparaj Purakayastha and Sri Nishan @ Ishan Purakayastha, were sentenced to suffer rigorous imprisonment for three months for their conviction u/s 447 IPC and Sri Rabindra Debatrata, was sentenced to suffer rigorous imprisonment for six months for his conviction u/s 448 IPC. By the impugned judgment and order, it was directed that all the sentences shall run

concurrently.

Being aggrieved by the said convictions and sentences, the Appellants, have come up with this appeal u/s 374 of the Code of Criminal Procedure (hereinafter called " Code of Criminal Procedure ").

2. The prosecution case, as it reveals at the trial, in brief, may be stated thus:

On 04.09.2001, at about 6.00 pm, while Shyamsundar Majumder (since deceased), who was the informant, was present in his house along with his wife, namely, Radha Rani Majumder (deceased) and his daughter i.e. PW 3. At that time, the Appellants, being armed with dao, entered his house and assaulted the said informant by inflicting dao blow, as a result of which, he sustained injury on his head. The wife of the informant (hereinafter called "the deceased"), who was in her kitchen, seeing the occurrence, ran away towards the backside of the house and the Appellants, namely, Sri Hari Sankar Debatrata. Harish Chandra Debatrata, Ruparaj Purakayastha and Nishan Purakayastha chased her (deceased). The daughter (PW 3) of the informant and the deceased, who was present in their house, at the time of occurrence, though heard cry of her mother, out of fear, did not venture to go out. On the fateful night, at about 11 p.m., after the arrival of police personnel, the dead body of the deceased was found lying, with bleeding injuries on her head and other parts of the body, in the field situated behind their house. The informant who sustained injuries, finding police officer in his house submitted a written complaint with the police, which was treated by the police as FIR and registered the same as Manu P.S. Case No. 28/2001, under Sections 448/326/302/34 of IPC.

3. During the investigation, police prepared inquiry report, forwarded the dead body of the deceased for post mortem examination, prepared a sketch map of the place of occurrence and recorded the statement of witnesses. At the close of the investigation, police submitted charge sheet against the Appellants, under Sections 448, 326, 302 read with Section 34 of IPC and forwarded them to the Court to stand trial. The learned Sessions Judge, framed the charges against the accused-Appellants for the offences under Sections 448/324/302 read with Section 34 of IPC. The charges were explained and read over to the accused persons, to which they pleaded not guilty and claimed to be tried.

4. In order to prove its case, prosecution examined seven witnesses, including the Medical Officer (PW 6) and the Investigating Police Officer (PW 7). The informant having died due to his illness, could not be examined as witness by the prosecution.

Considering the evidence on record, the learned trial Judge found the Appellants guilty of the charges, brought against them and, accordingly, convicted and sentenced them, as indicated above.

5. We have heard Mr. H. Debnath, learned Counsel, appearing for the Appellants and Mr. A. Ghosh, learned Addl. Public Prosecutor, appearing for the State-

Respondent.

6. Mr. Debnath, learned Counsel, appearing for the Appellants, firstly, submitted that the Appellant Sri Nishan Purakayastha @ Ishan Purakayastha, was below 18 years of age at the time of the occurrence and as such he being a juvenile, is entitled to the benefit under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter called "the Act"). The learned Counsel further submitted that, as the said juvenile has already suffered imprisonment for six years, which is more than the statutory period (three years) a juvenile can be detained, he is entitled to be released under the provision of Section 15 of the Act. The second point raised by the learned Counsel, is that except the evidence of PW.3, there is no other substantive evidence, on record, against the Appellants and that in view of the contradictions, appearing in the evidence of PW.3 and the FIR, regarding the roles played by the accused-Appellants, the prosecution could not prove the involvement of the Appellants beyond all reasonable doubt. It is, therefore, submitted that the Appellants are entitled to be released on benefit of doubt.

7. Refuting the said argument, advanced by the learned Counsel, appearing for the Appellants. Mr. A. Ghosh, learned Addl. Public Prosecutor, has submitted that, at the time of occurrence, as PW.3, i.e. the daughter of the deceased and the informant, was present in their house considering the facts and circumstances of the case, she is found to be the most reliable natural witness in this case.

It is further submitted that though PW.3 was cross-examined on behalf of the defiance, her evidence, regarding involvement of the Appellants, remained unshaken and as such there could be no reason to disbelieve the evidence rendered by PW 3. Supporting the impugned judgment and order, the learned Addl. Public Prosecutor, has submitted that, the learned trial Judge rightly found the accused-Appellants guilty of the offences, under which they have been convicted as aforesaid.

8. Before entering into the merit of the case, we would like to deal with the question regarding juvenility of the Appellant, namely, Sri Nishan @ Ishan Purakayastha. During the course of hearing, the said question having been raised before this Court, the learned Sessions Judge, North Tripura, Kailashahar was directed to make an enquiry for deciding as to whether the Appellant No. 5 aforesaid, was or was not a juvenile, as on 04.09.2001 i.e. on the date of the occurrence.

9. As directed, the learned District Judge, North Tripura, Kailashahar, conducted an enquiry and submitted the report indicating, therein, that the date of birth of the Appellant Sri Nishan @ Ishan Purakayastha was 12.04.1987 and as such his age, on the date of occurrence i.e. on 04.09.2001, was below 18 years and thus, it has been found that he was a juvenile on the date of the alleged commission of the offence.

10. Since, in terms of Sub-section (2) of Section 6 of the Juvenile Justice (Care

and Protection of Children) Act, 2000, the High Court and the Sessions Court, in appeal, revision or otherwise can exercise the powers conferred on the Juvenile Justice Board, constituted u/s 4 of the said Act, considering the period of detention (six years), already undergone by the said Juvenile in conflict with law, we are inclined to pass appropriate order(s) as could have been passed by the Board as defined in Section 2(c) of the said Act.

11. From a careful reading of Section 16 of the Act, it can be derived that no juvenile can be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security. Under the provisions of the Act, a juvenile can be referred to the Juvenile Board which may pass orders as it thinks fit and proper u/s 15 of the Act.

12. The Board may, upon enquiry, pass order, under Clause (g) of Sub-section (1) of Section 15 of the Act for sending the juvenile to special home, for a period of three years.

13. However, Section 16 of the Act provides that if it finds that the juvenile, who has attained the age of sixteen years, has committed an offence and the Board is satisfied that the offence committed is so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile, in a special home, to send him to such special home and that none of the other measures, provided under the Act, is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government. However, proviso to Sub-section (2) of Section 16 of the Act, provides that the period of detention so ordered shall not exceed in any case the maximum period provided u/s 15 of the said Act, i.e., for three years.

14. Referring to the cases of Upendra Kumar v. State of Bihar, reported in (2005) 3 SCC 592 and Dharambir Vs. State (NCT of Delhi) and Another, , this Court in the case of Sri Naru Debbarma v. State of Tripura, Criminal Appeal (J) No. 55 of 2007, disposed of on 27.9.2010 observed as follows:

A combined reading of Sections 15 and 16 of the said Act clearly shows that even if a juvenile is found to be guilty of an offence, howsoever serious such offence may be, he cannot be kept in confinement longer than a period of three years. In the light of this position of law, when the case of the Appellant is considered, it becomes clear that even if the Appellant had been found guilty of the offences, which he is alleged to have committed, he could not have been kept even at the special home, far less incarcerated, for a period longer than three years.

15. In our present case, admittedly, the Appellant, who is found to be a juvenile at the time of commission of the alleged offence, has been in detention with effect from 25.01.2005 and, thus, he has spent more than three years in jail. In the facts and circumstances of the present case, and in the light of the above decisions, held by courts, we are of the view that the sentences, passed against

the Appellant No. 5 i.e. Sri Nishan Purakayastha @ Ishan Purakayastha, needs to be set aside and accordingly he should be released forthwith. However, before doing so, we feel it just and appropriate to examine the correctness of the findings, rendered by the learned trial Judge, with regard to the conviction of the said Appellant.

16. In order to appreciate the arguments advanced by the learned Counsel, appearing for the parties, and to examine the correctness of the impugned judgment and order, we would like to briefly, scan the evidence on record.

17. Smti. Arati Majumder, who is the daughter of the deceased and the informant, deposed as PW 3. She, being the star witness, in her evidence, clearly stated that, on the fateful evening, when she and her parents were in their house, the Appellants, namely, Sri Rabindra Debatrata, Sri Hari Sankar Debatrata, Sri Harish Chandra Debatrata, Sri Rupa Raj Purkayastha and Sri Nishan Purkayastha, entered their house, with dao in their hands and that Sri Rabindra Debatrata, entering their dwelling house, had given a dao blow on the head of her father as a result of which he sustained bleeding injuries on his head. She further stated that, seeing the incident, her mother, who was in the kitchen at the time of the occurrence, ran away towards the backside of the house and that she (her mother) was followed by the Appellants, namely, Sri Hari Sankar Debatrata, Sri Harish Chandra Debatrata, Sri Rupa Raj Purakayastha and Sri Nishan Purakayastha. She also stated that, she heard cry of her mother, but due to fear did not go out. According to this witness, at about 11 p.m., police arrived in their house and they found the dead body of her mother lying in the field in injured condition, She clearly stated that, Sri Hari Sankar Debatrata, Sri Harish Chandra Debatrata, Sri Rupa Raj purakayastha and Sri Nishan Purakayastha, who had chased her mother, had killed her mother by assaulting with dao and that the said accused persons being co-villagers, were known to her since her childhood. Therefore, there was no difficulty, on her part, to identify the said assailants. This witness was cross-examined on behalf of the defiance. She denied the suggestion, put to her on behalf of the defiance, that the Appellants did not visit their house on the date of occurrence and that the Appellant Sri Rabindra Debatrata did not assault her father with a dao. She also denied the suggestion that the Appellants, namely, Sri Hari Sankar Debatrata, Sri Harish Chandra Debatrata, Sri Rupa Raj Purakayastha and Sri Nishan Purakayastha, did not murder her mother.

18. From the evidence of PW.3, it is found that the Appellants, being armed with dao, went to the house of the informant and after assaulting the informant on his head, they, except Rabindra Debatrata, had chased the deceased towards the field situated behind the house and the deceased had raised alarm by crying. The evidence of PW.3 also reveals that the dead body of the deceased was found lying, in injured condition, in the field behind their house. Though PW.3 was cross-examined on behalf of the defiance, no contradiction could be elicited to render her evidence unbelievable. Therefore, the evidence, given by PW 3,

implicating the Appellants and supporting the prosecution version remained unshaken.

19. There can be no dispute that fate of a case lies on the quality of evidence and not on the quantity of evidence. The evidence of a solitary eye witness, if found reliable and trustworthy, can form the basis for conviction.

20. In the present case, though the prosecution examined as many as seven witnesses, PW Nos. 1, 2 and 5, failed to support the prosecution version. They were declared hostile and despite their cross-examination on behalf of the prosecution, no incriminatory evidence could be elicited from their cross-examination.

21. PW.6, Dr. Phani Sarkar, was the Medical Officer, who performed autopsy in respect of the dead body of the deceased and examined the informant (since deceased). The said Medical Officer found the following injuries on the informant:

One cut injury over the frontal bone of scalp measuring 1" X 1/4 x 1/4" (length x breadth x depth). The injury was simple in nature and caused by any sharp cutting weapon. No other injury was found by me on his person. He was discharged from that P.H.C. on 14.9.2001 after treatment. The age of the injury was less than 48 hours from the time of my examination.

The said Medical Officer, who performed the autopsy, found the following injuries on the dead body of the deceased:

1. One cut injury on the left waist joint measuring 2" X 1" X 1" (length x breadth x depth). It was grievous and ante mortem injury in nature and caused by sharp cutting weapon.

2. Another cut injury over the right mid clavicular region measuring 4" X 5" X 4". The injury was grievous and ante mortem in nature and caused by any sharp cutting weapon.

3. Another cut injury below the left tinna (around the ear) measuring 3" x 3" x 2 1/2" The injury was grievous and ante mortem in nature and caused by any sharp cutting weapon.

4. Another cut injury on the right first rib which was grievous and ante mortem in nature and caused by any sharp cutting weapon.

This injury is also related to injury No. 2 and for that, no separate measurement of the injury is mentioned by me in my report.

No other external injury was found by me.

On dissection of the dead body I found as follows:

1. Brain was paller and homothorax was present in thorax.

All other organs were found healthy and intact.

The Medical Officer opined that the death of the deceased was due to cardio-respiratory arrest caused by haemorrhage and shock as a result of haemorrhage cut injury No. 2, which affected homothorax.

22. Sri Bir Kumar Deb Barma, who investigated into the case, was examined as PW 7. From examination of the said Investigating Officer, no material contradiction could be proved to demolish the evidence rendered by PW 3.

23. PW.3, who happened to be the eye witness to the occurrence, in her evidence, stated that Sri Rabindra Debatrata gave a dao blow on the head of her father. The medical evidence, showing that the said injured sustained cut injury on his scalp, supports the evidence given by PW 3. PW 3 further stated that the Appellants, namely, Sri Hari Sankar Debatrata, Sri Harish Chandra Debatrata, Sri Ruparaj Purakayastha and Sri Nishan Purakayastha, who were armed with daos, had chased her mother and that her mother was found dead lying in the field with blood injuries on her person. The medical evidence, regarding the injuries sustained by the deceased, clearly indicate that the death of the deceased was caused by inflicting cut injuries by means of a sharp cutting weapon, such as, dao. The evidence of PW.3 that the assailants of her deceased mother, chased the deceased, being armed with daos, supports the prosecution version that the injuries, sustained by the deceased, was caused by the Appellants. That apart, from the unshaken evidence of PW.3, it has been convincingly proved that the deceased was chased by the said Appellants towards the backside of the house of the deceased and her dead body was found lying at the back side of her house. Therefore, there is no difficulty in understanding that the deceased was last seen in the company of the Appellants, who chased her to the field, wherein her dead body was subsequently found. The circumstances that the said Appellants, being arrived with dao, had chased the deceased and that the dead body of the deceased, with cut injuries was found, sufficiently indicate the involvement of the Appellants, namely, Sri Rabindra Debatrata, Sri Hari Sankar Debatrata, Sri Harish Chandra Debatrata, Sri Ruparaj Purakayastha and Sri Nishan Purakayastha to the exclusion of any other person. Therefore, it can be safely held that the said Appellants, except Sri Rabindra Debatrata, had caused the death of the deceased.

24. The learned Counsel, appearing for the defiance, referring to the FIR, i.e. Exbt.-5, has submitted that, in the FIR, the first informant mentioned the names of only three persons, namely, Sri Hari Chandra Debatrata, Sri Hari Sankar Debatrata and Sri Rabindra Debatrata and that the contents of the FIR rule out the involvement of the other two Appellants, namely, Ruparaj Purakayastha and Sri Nishan Purakayastha. The FIR is certainly not a substantive piece of evidence. That apart, the informant, who lodged the FIR, has already expired for which he could not be examined as a witness.

25. From the contents of the FIR, as well as the evidence of PW.3, it is found that the informant was assaulted inside his dwelling house. PW.3. in her evidence, clearly stated that Sri Rabindra Debatrata, being armed with dao, entered their

dwelling hut and gave a dao blow on the head of her father. This statement of PW.3 indicates that all the assailants did not enter the dwelling house, wherein the informant was available. There is nothing on record to find that the informant, after being assaulted, could come out of the house to see the other persons, who were outside the house. Therefore, failure of the informant to mention the names of all the assailants does not negate the unimpeachable evidence, given by the solitary eye witness, i.e. PW 3. However, PW.3, who implicated Sri Rabindra Debatrata, with the assault caused to her father, did not state that the said accused too had chased her mother. She clearly mentioned the names of all the other four accused-Appellants except Sri Rabindra Debatrata, whom she saw to have given blow with dao on her father. If the said Appellant had also chased the deceased along with other Appellants, then, in our considered opinion, there was no difficulty for PW 3 to mention Rabindra Debatrata's name too. The omission of the name of the said person appears to be intentional, which supports the fairness and reliability of the said witness. Therefore, this omission, on her part, rules out the involvement of Sri Rabindra Debatrata with the death of the deceased.

26. In the light of the above discussion, we find nothing to disbelieve the evidence of PW 3. The evidence of PW.3, which remained unshaken, inspire confidence and lead us to conclude, that the Appellants, being armed with dao, committed criminal trespass into the premises of the informant, Shyamsundar Majumder in furtherance of their common intention to cause hurt to the informant and consequently, Sri Rabindra Debatrata, in furtherance of their said common intention, after entering into the dwelling house of the informant, gave a dao blow on his head, causing cut injuries on the scalp of the informant. The evidence of PW.3 has also established, beyond doubt, that the Appellants, namely, Sri Hari Sankar Debatrata, Sri Harish Chandra Debatrata, Sri Ruparaj Purakayastha and Sri Nishan Purakayastha, chased the deceased, towards the backside of her house and, thereafter, they, in furtherance of their common intention, caused death of the deceased, whose dead body was found.

27. Considering the entire facts and circumstances of this case and the fact that the Appellants being armed with dao (except Sri Rabindra Debatrata), chased the deceased towards the field, wherein her dead body was found by the police and PW.3, prove, beyond doubt, that the said Appellants caused the death of the deceased.

28. In view of the above substantive evidence rendered by PW.3, we find no difficulty in holding that the above mentioned Appellants, in furtherance of their common intention, committed criminal trespass into the premises of the informant, caused hurt to him by means of a sharp cutting weapon and, thus, committed offences under Sections 447 and 324 read with Section 34 IPC.

29. From the evidence on record, as observed above, it has also been proved, beyond doubt, that the Appellant, Sri Rabindra Debatrata, had committed the offence u/s 448 IPC and that the Appellants, except Sri Rabindra Debatrata, in

furtherance of their common intention, caused the death of the said deceased and committed thereby the offence of murder punishable u/s 302 IPC. As Sri Rabindra Debatrata could not be implicated with the death of the deceased, his conviction and sentence u/s 302 IPC are liable to be set aside and accordingly, we do so.

30. We have already found that Sri Nishan Purakayastha @ Ishan Purakayastha was a juvenile at the time of the occurrence and he has already undergone the maximum period (three years) of detention that can be imposed u/s 15(1)(g) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Therefore, the sentence, passed against him, is hereby set aside. He be set at liberty forthwith, unless he is required to be detained in connection with any other case in accordance with law.

31. In view of the foregoing discussion, the conviction recorded, under Sections 302, 447, 324 read with Section 34 IPC, against Appellants, namely, Sri Hari Sankar Debatrata, Sri Harish Chandra Debatrata, Sri Ruparaj Purakayastha and Sri Nishan Purakayastha @ Ishan Purakayastha and u/s 448 IPC against Sri Rabindra Debatrata need no interference by this Court and accordingly, the sentences awarded against Sri Hari Sankar Debatrata, Sri Harish Debatrata and Sri Ruparaj Purakayastha, for their conviction under Sections 447, 324 and 302 read with Section 34 IPC and the sentence imposed, on Sri Rabindra Debatrata, for his conviction under Sections 324 and 448 IPC, are hereby upheld and affirmed.

32. We have already directed release of Sri Nishan Purakayastha @ Ishan Purakayastha if not required in connection with any other case.

33. As Sri Rabindra Debatrata whose conviction and sentence, under Sections 448 and 324 IPC have been upheld, has already suffered the sentences of rigorous imprisonment for 1 (one) year for his conviction u/s 324 IPC and rigorous imprisonment of 6 (six) months for his convictions u/s 448 IPC, we direct that he be released and set at liberty forthwith, if not required in connection with any other case.

34. With the above observations and directions, this appeal is partly allowed as indicated above.

35. Send back the L.C.R.