
(2018) 04 GAU CK 0037

In the Gauhati High Court

Case No : CRL.A(J) 69, A(J) 71, A(J) 70 of 2014

RAGHA MURA

APPELLANT

Vs

THE STATE OF ASSAM

RESPONDENT

Date of Decision : 04-04-2018

Acts Referred:

Indian Penal Code 1860 — Section 34, 304

Citation : (2018) 04 GAU CK 0037

Hon'ble Judges : AJIT SINGH C.J, MANOJIT BHUYAN

Bench : Division Bench

Final Decision : Allowed

Judgement

Ajit Singh, C.J.

1.This judgment passed in Criminal Appeal No. 69(J)/2014 shall also decide Criminal Appeal Nos. 70(J) & 71(J), both of 2014, because they arise out of the same impugned judgment and were heard analogously.

2. All the three appellants, namely, Ragha Mura, Abu Mura and Jiten Mura - have been convicted under Section 304 Part-I of the Indian Penal Code

and sentenced to imprisonment for life and fine of Rs.2,000/- with default stipulation.

3. The victim of the incident was Sanjib Mura @ Bandre, aged about 32 years. He was also brother-in-law of the appellants. He and the appellants even lived in the same village Thekeraguri under Dibrugarh District of Assam.

4. According to the prosecution case, Sita Mura (PW-4) is sister of the appellants and she was married to Sanjib Mura. On 15.07.2012 at about 8

P.M., Sanjib Mura came to the house of appellants in a drunken state and created nuisance. The appellants tried to pacify Sanjib but in vain. The

appellants ultimately lost their cool and assaulted Sanjib with their lathis of bamboo and when Sanjib was seriously injured, they tied his legs and hands

with ropes, carried him to a nearby river Diksam and threw him there on its bank. Bablu Mura (PW-3), who lived near the house of appellants,

hearing hue and cry, came out from his house and saw them assaulting Sanjib with bamboo lathis. He, in turn, informed the Village Headman -

Tileswar Bakalial (PW-1) about the incident. Later, appellant - Abu Mura also came to the house of Tileswar and confessed about the killing of Sanjib

by him and two co-appellants. He even led Tileswar to the dead body. On the following morning i.e. 16.07.2012, Tileswar took Abu Mura with him to

the Rajgarh Police Station leaving the dead body of Sanjib to be taken care of by the villagers. At the Police Station, Tileswar lodged the First

Information Report Exhibit-2.

5. Jibendra Brahma (PW-7) as In-charge of Rajgarh Police Station recorded the memorandum statement of Abu Mura, pursuant to which he seized

dao and bamboo sticks lying near the body of Sanjib. He also seized two ropes from the place of occurrence in the presence of Tileswar, Chandra

Bahadur Tamang (PW-5) and Peter Cebestine Minj (PW-6). Jibendra Brahma then sent the body of Sanjib for post-mortem examination.

6. Dr. Subhajyoti Deka (PW-2) conducted the post-mortem examination on the dead body of Sanjib Mura. He found 13 (thirteen) injuries which were

caused by pointed sharp cutting weapon as well as blunt force impacts. Injury No. 2 was a stab injury caused by pointed sharp cutting weapon, injury

nos. 9 and 13 were caused by sharp edged weapon and injury nos. 1, 3, 4, 5, 6, 7, 8, 10, 11 and 12 were caused by blunt force impacts. According to

him, death was due to shock and hemorrhage due to the injuries sustained as described. His post mortem examination report is Exhibit-4.

7. Jibendra Brahma, after completing the investigation submitted Exhibit-7 charge-sheet against all the appellants for an offence under Section 302/34

of the Indian Penal Code. During trial, the appellants pleaded false implication. According to them, they were arrested from their house on the next

day of occurrence without any reason.

8. But the trial court relying upon the evidence of Tileswar and Bablu as well as the evidence of extra-judicial confession of Abu Mura (appellant)

made before Tileswar and the disclosure statement made before the police

leading to the discovery of dead body of Sanjib and the weapons of assault, convicted and sentenced the appellants as aforesaid.

9. It is argued on behalf of the appellants that the evidence of Tileswar and Bablu are not sufficient to convict them and the so called extra-judicial confession made by Abu Mura before Tileswar is not proved. Besides, the so called confession made by Abu Mura before the police is also not admissible in evidence and his disclosure statement is only admissible to the extent of discovery of the dead body and the weapon, which is also not sufficient to convict the appellants and as such they may be acquitted by giving them the benefit of doubt.

10. After hearing the learned counsel for the parties and perusing record, we are of the view that the submissions made by the respective learned counsel for the appellants have sufficient force and as such all the three appeals deserve to be allowed. Bablu has deposed that at about 9 P.M. on the night of occurrence while he was sleeping in his house he heard hue and cry and coming out from his house he saw the appellants assaulting Sanjib Mura due to which he died. According to the police case diary statement of this witness, he saw the appellants assaulting Sanjib with lathis of bamboo.

Bablu has, however, admitted during his cross-examination that he neither came for his rescue nor went close to the dead body to examine him nor can say as to which of the appellants assaulted Sanjib Mura from which side. He also deposed that he informed Tileswar about the occurrence. But, Tileswar has not corroborated the evidence of Bablu about being informed by him. According to Tileswar, it was Abu Mura who had come to his house and informed him about lying of the dead body of Sanjib Mura. Had Bablu really seen the occurrence and the appellants assaulting Sanjib Mura, he would have naturally tried to intervene. Even if it is assumed that he did not interfere out of fear, he would have definitely raised an alarm in the locality and many people would have seen the occurrence. But, there is hardly any other person of the locality who came out and saw the occurrence.

Naturally it would have taken a substantial time for the appellants to assault Sanjib Mura with bamboo lathis and then to tie his hands and legs with small ropes and throw him near the bank of the river carrying him together. During such a time, it is highly improbable that even a single person of the locality would not see the incident or Bablu also could not get a chance to raise

an alarm or to come for the rescue of Sanjib Mura or to come close to examine him as to whether he is dead or alive or was in need of medical help. On the contrary he remained a silent spectator. This unnatural human conduct of Bablu casts a serious doubt on the credibility of his evidence making the same doubtful and not sufficient to convict the appellants without any corroborative evidence to that effect. Besides, the testimony of Bablu is not supported by the medical evidence inasmuch as the medical evidence suggests that the injuries on the person of Sanjib were also caused by pointed and sharp edged weapons, whereas he deposed that the appellants assaulted Sanjib with only bamboo lathis.

11. According to Bablu, the dead body of Sanjib Mura was lying open in front of his house till the police came next day morning. From the sketch map prepared by Jibendra Brahma also it is transparent that the dead body and the weapon of assault were lying open on the road side in the clear gaze of the people till the police seized them. Therefore, it is not a case where the discovery of the weapon of assault as well as the dead body could only be made at the instance of a disclosure statement made by one of the appellants and the place where those were kept was only within the knowledge of Abu Mura. When the dead body of Sanjib Mura and the weapons of assault were not kept concealed and rather were lying in clear public view on the side of public road, the disclosure statement made by Abu Mura before the police is of no consequence to the prosecution.

12. So far as the extra-judicial confession made by Abu Mura before Tileswar is concerned, that is also doubtful. Though, Tileswar deposed at first that while going to the police station, Abu Mura told him that all the appellants had committed murder of Sanjib Mura by assaulting him with lathis, he denied the same during his cross-examination. Tileswar categorically admitted during his cross-examination that Abu Mura did not say anything except the place where the dead body of Sanjib Mura was lying. This inconsistent testimony of Tileswar has made his evidence doubtful and not trustworthy making the same to be unsafe to be relied on to base a conviction.

13. Sita - the sister of the appellants - also turned hostile and did not depose anything incriminating against the appellants. Chandra Bahadur Tamang and Peter Cebestine Minj are only seizure witnesses in presence of whom the weapons of assault were seized and they have not deposed anything

regarding involvement of the appellants in the offence. Therefore, we are of the considered view that the prosecution has not been able to prove the charge against the appellants beyond reasonable doubt and as such they deserve the privilege of benefit of doubt.

14. For these reasons, we disagree with the findings of the trial court and set aside the impugned conviction and sentence. We hold that the appellants not guilty of the charged offence. They are accordingly acquitted. The appellants are in jail for more than six years and hence they are directed to be released forthwith.

15. The appeals are allowed.