
(2010) 09 GAU CK 0003
In the Gauhati High Court
Case No : Criminal Appeal No. 29 (J) of 2004

Rajesh Kurmi

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

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

Citation : (2011) 3 GLR 216

Hon'ble Judges : H. Baruah, J; Amitava Roy, J

Bench : Division Bench

Advocate : M. Buzarbaruah, for the Appellant; K.A. Mazumdar, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—This appeal from jail witnesses a challenge to the judgment and order dated 26.12.2003 recorded by the learned Addl. Sessions Judge (Ad hoc), FTC, Biswanath Chariali in Sessions Case No. 45/03 convicting the accused/appellant u/s 302, IPC and sentencing him to suffer R.I. for life and to pay a fine of Rs. 500, in default, to undergo R.I. for a further period of one month.

2. We have heard Mrs. M. Buzarbaruah, learned amicus curiae for the accused/appellant and Mr. K.A. Mazumdar, learned Public Prosecutor, Assam.

3. On the FIR lodged by Smt. Kuleswari Kurmi with the Officer-in-Charge of Borgang Police Out Post on 6.10.2000 alleging that in the night of 5/6.10.2000 her husband Puspa Kurmi along with his co-wife Purni Kurmi had been hacked to death by sharp weapons by some unknown miscreants, police registered Behali P.S. Case No. 119/2000 u/s 302, IPC. In the FIR, however, the informant expressed her suspicion against Sri Rupadhar Chabar to be the assailant. On completion of the investigation, charge sheet was submitted against accused Rajesh Kurmi and Rupadhar Chabar. At the time of framing of charge the latter was, however, discharged. Charge was, therefore, framed against the accused/

appellant u/s 302, IPC to which he pleaded "not guilty". In course of the trial that followed the prosecution examined eighteen witnesses including the Investigating Officer and the doctor who had performed post mortem on the dead bodies. The defence did not adduce any evidence. The statement of the accused/appellant was, however, recorded u/s 313, Cr.PC wherein he maintained that he was not guilty of the offence with which he had been charged. The learned trial court, thereafter, on the basis of the materials available before it, convicted and sentenced the accused/appellant as above.

4. The learned amicus curiae has persuasively argued that the prosecution having failed to prove the charge against the accused/appellant, the impugned judgment and order, if allowed to stand, would be travesty of justice. According to her, there being no evidence whatsoever to establish the complicity of the accused/appellant with the alleged crime, his conviction is patently illegal. Without prejudice to the above, the learned amicus curiae has argued that the evidence of the prosecution witnesses not only would establish that the accused/appellant at the relevant point of time had been enjoying a cinema show with the informant and others, the Investigating Agency having failed to forward the allegedly seized wearing apparels and the "dao" to the Forensic Science Laboratory for serological examination, the learned trial court was apparently in error in holding the accused/appellant to be guilty of the offence of murder. Mrs. Buzarbaruah has urged that not only there is no eye witness of the incident, the attempt on the part of the prosecution to rope in the accused/appellant on the basis of its plea that he had led the police to the discovery of his wearing apparel having been proved to be abortive, no other corroborative evidence being available, the learned court below ought to have acquitted him.

5. Mr. K.A. Mazumdar, learned Public Prosecutor has desperately endeavoured to sustain the conviction relying, amongst others, on a statement of the accused/appellant claimed to have been made by him before the police and proved as Exhibit-11, contending that as he thereby had admitted his guilt, his conviction and sentence is unassailable in law and ought not to be interfered with.

6. Before evaluating the rival contentions advanced, it is indispensable to conduct a brief survey of the evidence on record.

PW1, Smt. Kuleswari Kurmi, the informant stated on oath that as it was a "Durga Puja" day she along with her daughter Ruma Kurmi had left the house in the evening for the cinema show leaving her husband Puspa Kurmi and his co-wife Purni Kurmi to join them later. On her return at the dawn the next day she found both of them lying dead in their courtyard with cut injuries on their person. In cross-examination, she inter alia indicated that the second wife of her husband had been the previous wife of one Rupadhan Chabar who, as stated by her in the FIR, was doubted to be the offender. She further stated in the cross-examination that in the evening she had taken meal in the house of Tipu @ Rajesh (accused/appellant), whereafter, they all proceeded to enjoy a cinema show. She, however, disclosed that on her way along with Rajesh and others she had noticed

Rupadhan standing with a "mit dao".

7. The testimony of PW2, Puma Nahekia; PW3, Kamal Bawri; PW4, Srinath Swashi and PW5, Damayanti Sawar being of no significance whatsoever, the same is not being discussed in details. PW6, Nagen Ch. Koch stated that the Investigating Officer had seized the wearing apparels of the deceased vide Exhibit-1 on which he put his signature [Exhibit-1(1)]. In cross-examination, however, he conceded of not seeing the seized articles in court.

8. PW7, Bharat Kurmi stated about seizure of a "dao" ("mit dao") along with its sheath from the house of the accused/appellant two days after the incident vide Exhibit-2 on which he had put his signature-Exhibit-2(1). In cross-examination, he disclosed that at the time of seizure the accused/appellant was in the police station. He also admitted of not having seen the seized "dao" at the time of his examination in court.

9. PW8, Ruhul Haider had written the FIR (Exhibit-3) which he proved with his signature thereon [Exhibit-3(1)]. He also proved the seizure of the wearing apparels of the deceased vide Exhibit-1. In cross-examination, however, he stated that the seizure had been made at the police station.

10. PW9, Dr. Dilip Kataki has performed the post mortem examination on the dead bodies. In his examination on oath at the trial he with reference to the post mortem reports (Exhibit-4 & 5) narrated to have detected the following injuries :

Purni Kurmi

2.(1) One incised wound of 5" x 1" size is found over back of the neck involving all the tissues. (2) One incised wound of 12" long extending from back of the right arm to the left eye involving all the tissues and the cervical vertebrae is severed.

3. One incised wound of 4" x 1" extending from the angle of the left side of the mouth to back of the skull on left side.

4. One incised wound of 2" x 1" over scalp exposing (severity) occipital bone.

5. One incised wound of 3" x 1W extending from back of the left arm exposing the upper part of the humerus ante scapula on left side.

Distal part of the finger of the left hand are incised.

Brain and spinal cord is severed at the side of the severed cervical vertebrae.

Stomach and its contents : smell of liquor is found.

Other organs of abdomen : Normal

More details description of injury. All the incised wounds are severe, sharp and clear cut cross each other at deep level, the wound run from the left to right, all the tissues are included on the wound blood run down from both sides on the

neck wounds are homicidal in nature.

Cause of death :

Death was due to shock as a result of injury sustained (severed haemorrhage injury to spinal cord).

Puspa Kurmi

Incised wound for number over right side of the throat 6 inch long 4 inch deep mandible on right side found severe cut incised wound. Right ear is severed.

One incised wound about 5" long 1/2" deep. One cervical vertebrae is severed from right side.

Brain matter is found coming out from a incised wound over the occipital area of the skull. The wound is about 3" x ?" Another incised wound of 5" x ? over the left side of the skull, brain matter coming out from the wound.

Brain and spinal cord

Spinal cord is found severed where the cervical vertebrae is severed.

Mouth, pharynx, oesophagus : Undigested food with smell of liquor found coming out through mouth.

Stomach and its contents

On opening the stomach smell of liquor is found and it was empty.

More details description of the injury

All the incised wounds are severe, sharp and clear cut, cross each other at deep level, the wound runs from left to right.

All the tissues are included in the wound, blood run down from both sides of the neck. Wound are homicidal in nature. Hesitation cut is absent.

In my opinion the cause of death is due to shock as a result of injury sustained (severe haemorrhage and injury to spinal cord)

Ext. 5 is the post mortem report of Puspa Kurmi and Ext. 5(10) is my signature, (i.e., Dr. Dilip Kataki).

11. PW10, Soma Nayak; PW11, Lakhi Kanta Kurmi and PW12, Mohan Nayak have been introduced by the prosecution to prove the seizure of the apparel of the accused/appellant which he had been wearing at the time of the commission of the offence. Whereas PW10 stated that he was shown some clothes taken by the police in its vehicle and was asked to put his signature on a document which he proved as Exhibit-6, PW11 in his examination-in-chief had deposed that the accused/appellant had disclosed to the police that he had killed Puspa Kurmi and Purni Kurmi and also the place where he had kept the blood stained weapon hidden. According to PW11, the police had taken him and Ruhul Haider (PW8) to

No. 5 Beel of Borbil Tea Estate and the accused/appellant took out one pant and one shirt from a place where the same were hidden. This witness proved the seizure list (Exhibit-6) with his signature thereon [Exhibit-6 (1)]. In cross-examination this witness admitted that the accused/appellant had not stated in his presence that he had killed Puspa Kurmi and Purni Kurmi. He, however, denied the suggestion that he had not stated before the police that the accused/appellant had confessed about his involvement in the offence. PW12 deposed that while he was picking tea leaves in the Tea Estate, police stopped its vehicle and obtained his signature/LTI on a document. In cross-examination, he stated that before doing so police showed him a mud stained apparel.

12. The evidence of PW13, Hari Bhumij; PW14, Bhanu Bhumij and PW15, Lakhi Kurmi is of no consequence and is, therefore, not being referred to. PW16, Ajay Kurmi stated that police had once visited the house of the accused/appellant (his father) who was then not present. Police then asked for a shirt of his father and also seized a "dao" vide Exhibit-2. In cross-examination, this witness stated that he had taken out a "dao" from the house.

13. PW17, Bhubaneswar Talukdar proved the charge sheet (Exhibit-7). PW18, Zahid Hussain is the Investigating Officer of the case. He stated about the different steps taken by him in course of the investigation. According to this witness, the seized clothes of the accused/appellant which he had been wearing at the time of commission of the offence had been kept concealed by him and that he led to the discovery thereof on 10.10.2000. He stated that the accused/appellant had hidden the clothes in a muddy place in the Borbil Tea Estate and claimed that he had seized the same vide Exhibit-6. After recording the statement of the accused/appellant the Investigating Officer testified that the said statement was made by the accused/appellant in presence of many witnesses including PW7, PW11 and others. In cross-examination, this witness, however, admitted that he had not enquired of Rupadhar Chabar's whereabouts in that fateful night. He also admitted that he had not recorded the statement of the accused/appellant in his diary in connection with the seizure vide Exhibit-6. He conceded of not forwarding the seized articles to court. He admitted further of not having sent the seized articles for examination of the Forensic Science Laboratory. He conceded that Exhibit-2 and 6 (seizure lists) did not contain the signature of the accused/appellant. He disclosed that though he had been forwarded to the court, the accused/appellant refused to confess.

14. In the backdrop of the evidence adduced by the prosecution witnesses as recited hereinabove, we are of the unhesitant opinion that the charge against the accused/appellant has remained unproved. Not only there is no eye witness in the instant case in support of the charge, the evidence of PW11 leading to discovery does not inspire the confidence of this court. Not only this witness has contradicted himself about the disclosure made by the accused/appellant to this effect before the Investigating Officer, the persons before whom the same is claimed to have been made have not supported the prosecution in this regard.

Not only the Investigating Officer has not recorded the statement of the accused/appellant stated to have made to this effect before him, the signature of the accused/appellant has also not been obtained on the seizure list (Exhibit-6). It is intriguing as to why the Investigating Officer had not enquired about the whereabouts of Rupadhar Chabar and Rajesh Kurmi in course of the night during which the incident had occurred. This is more so as two persons were mercilessly hacked to death as would be evident from the multiple incised wounds detectable on their bodies.

15. That the Investigating Officer had been wholly callous and superficial in his probe is apparent from the fact that not only he failed to forward the seized articles to the Forensic Science Laboratory to ascertain as to whether the same could in any way be correlated to the incident, he did not even ensure that the seized articles were produced in court for their identification by the witnesses of the prosecution. It passes our comprehension as to how if really the accused/appellant had made a statement in presence of a host of persons as claimed by him, none had supported the said fact in course of the trial on oath. According to us, the investigation has been wholly sloppy and shoddy, as a result whereof, the actual assailants have made good their escape from the clutches of law. Had the Investigating Officer been careful and enterprising as was expected of him, in all probability the real offender could have been apprehended and made to stand trial. In the true sense of the term such indifferent and inept investigation has resulted in a mockery of the process. A crime against society, therefore, would go unpunished for such faulty and sketchy investigation. We are, therefore, of the opinion that stringent action should be taken against the Investigating Officer, both departmentally and otherwise in accordance with law.

16. Be that as it may, vis-a-vis the accused/appellant there is no semblance of evidence to establish a nexus between him and the offence for which he has been charged. We are, therefore, left with no alternative but to exonerate him therefrom. Ordered accordingly.

17. We have perused the impugned judgment and order and find ourselves in disagreement with the reasons recorded therein. The appeal, thus, stands allowed. The impugned judgment and order is set aside. The accused/appellant is hereby directed to be set at liberty forthwith.

18. A copy of the judgment and order be forwarded to the Director General of Police, Assam for his perusal and necessary action against the Investigating Officer in accordance with law.

19. Before we part, we record our appreciation for the assistance rendered by Mrs. M. Buzarbaruah learned amicus curiae in recognition whereof we direct payment of Rs. 3,500 therefor. The payment should be made forthwith.