
(2017) 02 GAU CK 0052
In the Gauhati High Court
Case No : 105 of 2014

Raju Sawtal @ Chowtal

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 21-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 164](#) - Power to examine the accused - Recording of confessions and statements
[Indian Penal Code, 1860](#), [Section 176](#)

Citation : (2017) 02 GAU CK 0052

Hon'ble Judges : Ajit Singh, Manojit Bhuyan

Bench : DIVISION BENCH

Advocate : B. Sarma, M. Phukan

Final Decision : Dismissed

Judgement

1. The appellant Raju Sawtal @ Chowtal has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 5,000/- with default stipulations for causing the death of Gopal Horo on 16.09.2010 at around 5:30 PM, inflicting stab wounds by means of a knife.

2. On the same day at around 5:40 PM Yahijuddin Ahmed (PW- 10), who was serving as the Sub-Inspector of Police at Borholla Police Station received telephonic information from Dibakar Singpho (PW-8), who was the Village Defence Party Secretary of Panjan, about the incident of murder and the same was entered in the General Diary Register of Borholla Police Station, being G.D. Entry No. 218 dated 16.09.2010. Acting on the said Ejahar the said PW-10 visited the place of occurrence at Panjan Tiniali and found the dead body of Gopal Horo lying at the said Tiniali. On 16.09.2010 itself, at around 10 PM, a written Ejahar was received from the younger brother of the deceased i.e. Mathu Horo (PW1). As per the written Ejahar, the appellant Raju Sawtal killed Gopal

Horo at about 5:30 PM of 16.09.2010 by stabbing with a knife at Panjan Tiniali. The said written Ejahar was registered as Borholla P.S. Case No. 23/2010 under Section 302 IPC. PW-10 being entrusted with the charge of investigation, recorded the statement of witnesses, held inquest over the dead body, sent the corpse for post-mortem examination. On 16.09.2010 at around 8:40 PM, a blood stained towel was seized vide Ext.-3 seizure list, followed by the seizure of one long dragger and one black leather sheath on 17.09.2010 at 5 PM in the presence of witnesses, on being led and showed by the appellant.

3. During the course of investigation, the appellant was also produced before Smt. Bipakkhi Borthakur (PW-11), Judicial Magistrate, 1st Class, Jorhat for the recording of his statement under Section 164 Cr.P.C. Although the appellant appeared before PW-11 on 18.09.2010, however, his confessional statement was recorded on 20.09.2010, on being produced from judicial custody. The said statement under Section 164 Cr.P.C. is Ext.-8.

4. Upon completion of investigation, charge-sheet was filed against the appellant and the case was committed to trial. Formal charge was framed and the same was read over and explained. The appellant pleaded guilty.

5. During trial, the prosecution examined as many as 14 (fourteen) witnesses, including the Medical Officer (PW-7), the Investigating Officer of the case (PW-10) and the Judicial Magistrate (PW-11). The appellant was also examined under Section 313 Cr.P.C. and the stand taken by him was of total denial and false implication.

6. Majesh Horo (PW-2), Samsang Horo (PW-3), Mashi Murmur (PW-4) and Molakhi Horo (PW-5) deposed as eye-witnesses to the incident of having seen Raju Sawtal stabbing Gopal Horo. In so far as PW-3 is concerned, he stated on the date of the incident while he was coming back after playing on the playground, he saw Raju Sawtal stabbing Gopal Horo on the stomach with a knife. After dealing two or three stabs, Raju Sawtal fled on a bicycle taking along the knife with him. He stated that Majesh Horo (PW-2) was with him. The incident was reported to the VDP Secretary (PW-8). In cross, PW-3 also stated that there were three other persons with Raju Sawtal, namely, Suli Horo, Durga Topno and Biru Kharia. PW-4 also deposed along the same lines of having witnessed Raju Sawtal killing Gopal Horo by stabbing with knife and also about the presence of the three persons who had been named by PW3. Deposition of PW-5 is that he with Gopal Horo had gone to watch football match at Tiponia Village and while returning he saw Suli Horo and Biru Kharia catching hold of Gopal with Raju Sawtal stabbing Gopal by means of a dragger.

7. At the outset it is placed on record that the testimony of PW-3, PW-4 and PW-5, who have presented themselves as eye-witnesses, are not believable nor their testimony with regard to the presence of three other named persons, alleged to have been in the company of the appellant Raju Sawtal. Their depositions to the extent above are improved versions as made before the Court.

Their initial statements before the police and so recorded do not show that either they were witnesses to the incident or that there were three other persons involved in the crime. Accordingly, the evidence of the said PW-3, PW-4 and PW-5 do not go to support the prosecution case.

8. Majesh Horo (PW-2), however, stands as a reliable eye-witness. His statement made before the police as well as his statement under Section 164 Cr.P.C. recorded on 18.09.2010 are consistent. As such, his statement is trustworthy and goes to support the case of the prosecution.

9. Bishal Kandula (PW-12), Nabin Tirki (PW-13) and Patras Kandula (PW-14) have deposed of having witnessed the seizure of the knife, on being led and showed by the appellant. All of them were present when the accused showed the police personnel of the place where the knife was kept concealed under the grass in the betel-nut garden of one Andilus Kandula. The said witnesses had also endorsed Ext.-6 Seizure List. Their role as seizure witnesses finds due corroboration from the deposition of the Investigating Officer (PW-10).

10. The medical evidence brought on record was through Dr. Gautam Hazarika (PW-7), who had performed post-mortem examination on Gopal Horo. He proved the post-mortem report (Ext.-5). According to the doctor, Gopal Horo sustained the following injuries:

"a) Stab wound left lower anterior chest wall 1" x 3".

b) Stab wound about 2" long over anterior abdominal wall just above the umbilicus. The underlying small intestine is cut and protruding out of the wound.

c) Stab wound 2" long over left side of umbilicus the underlying small intestine is cut and protruding out of the wound.

d) Stab wound about 3" long just below the umbilicus the underlying intestine and cut and exposed.

Walls- 3 Nos. of stab wounds present over the anterior abdominal wall and the underlying intestine amprohded out."

In the opinion of the doctor, death occurred as a result of shock and syncope from the injuries sustained. In cross, he deposed that the injury had been caused by sharp cutting weapon.

11. The statement of the appellant Raju Sawtal under Section 164 Cr.P.C. was recorded by the Judicial Magistrate, 1st Class, Jorhat, who deposed as PW-11. The said statement was recorded in strict terms of law and procedure on 20.09.2010. Records do not go to show any short-coming or procedural lapse on the part of PW-11 while recording the statement of the appellant. In the said statement (Ext.-8), the appellant had voluntarily stated that on 16.09.2010 he had found Gopal Horo watching football match. He intercepted Gopal at Panjan Tiniali and after a brief discussion he stabbed Gopal with a knife. Gopal died on the spot and the appellant left the place. Later on, police arrested on finding the

appellant on the Panjan Road.

12. In the statement made by the appellant under Section 313 Cr.P.C., he has however denied his involvement with further statement that confession had been made before PW-11 on being forced to do so by the police. This statement under Section 313 Cr.P.C. was recorded on 13.02.2014.

13. We have heard the learned counsels for the parties and have also closely perused the materials on record. We discard the deposition of PW-3, PW-4, PW-5 as eye-witnesses on ground that the same are improved versions made before the Court. We, however, find the testimony of Majesh Horo (PW-2) as trustworthy, consistent and reliable. The deposition of PW-2 also finds due corroboration with that of the medical evidence on record. In no uncertain terms, the appellant himself in his statement under Section 164 Cr.P.C. lends credence to the testimony of the PW-2. The prosecution has been able to establish the guilt of the appellant beyond all reasonable doubt of having been the sole perpetrator of the crime. Gopal Horo died as a result of multiple stab injuries caused by Raju Sawtal. The recovery of the knife at the instance of the appellant also operates as strong evidence against him. The defence utterly failed to discard the testimony of PW-2, PW-7, PW-11 and the other seizure witnesses.

14. The conviction of the appellant under Section 302 IPC and sentence so imposed upon him do not suffer from any illegality. On the discussions and findings above, the conviction and sentence on the appellant is upheld. Resultantly, this appeal stands dismissed.