
(2019) 03 GAU CK 0082
In the Gauhati High Court
Case No : Criminal Appeal (J) No. 16 Of 2015

Rejia Khatun And Anr

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 28-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304, 307, 324, 326, 341

Citation : (2019) 03 GAU CK 0082

Hon'ble Judges : Manash Ranjan Pathak, J; Mir Alfaz Ali, J

Bench : Division Bench

Advocate : Ujjal Choudhury, Shamima Jahan

Judgement

Mir Alfaz Ali, J

1. We have heard learned Amicus Curiae, Mr. Ujjal Choudhury for the appellant and learned Addl. Public Prosecutor, Ms. Shamima Jahan for the State/respondent No. 1, who have also taken us through the evidence and materials brought on record.

2. This jail appeal is directed against the judgment and order dated 07-11-2014, passed by learned Sessions Judge, Sonitpur, in Sessions Case No.252/2005. By the said judgment, learned Sessions Judge convicted the appellants u/S. 302 read with Section 34 IPC and sentenced them to rigorous imprisonment for life and fine of Rs. 5,000/- with default stipulation u/S. 302 IPC. Appellants were further sentenced to rigorous imprisonment for three months under Section 324 IPC.

3. As per prosecution case, on 16-03-2005 at about 7.30 to 8 p.m. the appellant Rejia Khatun and her mother Miarma (since deceased) called the victim Muslemuddin to their house. When the victim reached their courtyard, the appellants inflicted injuries to him with a "khukri". Hearing alarm raised by Sakina, mother of the victim, Hasan Ali came there and the accused persons assaulted both Sakina and Hasen with khukri, lathi etc. The victim Muslemuddin

later on succumbed to the injuries. PW 2, Ismail Khan lodged the FIR (Ext. 1), on the basis of which police registered Tezpur Police Station Case No.214/2005 u/S. 341/326/307/302/34 IPC and commenced investigation. In course of investigation, the investigation officer recorded statement of the witness, prepared sketch map and sent the body for post mortem examination. The inquest report of the body was prepared by Sub-Inspector of Police, Ananta Das and post mortem examination was conducted by Dr. Tilak Bhattacharjee.

4. Dr. Tilak Bhattacharjee (PW 7), who conducted post mortem examination on the body of the victim found the following injuries :-

"Sharp cut injury on left lower abdomen below and lateral to umbilicus of 2.5 cm by 1 cm. piercing whole abdominal wall directly upward. Peritoneal cavity is full of blood. Sharp cut injury of anterior surface of spleen of 2cm x 3 cm. Injury described is ante-mortem in nature."

In the opinion of the autopsy doctor, death of the victim was caused due to haemorrhagic shock as a result of the injuries sustained.

5. On conclusion of the investigation charge-sheet was laid against the four accused persons including the present appellants and eventually and all of them stood trial.

6. In course of trial, learned Sessions Judge framed charges against the appellants under Sections 341/324/307/302 read with Section 34 IPC, to which they pleaded not guilty. Fourteen witnesses were examined by the prosecution in order to establish the charges. The accused persons, however, did not adduce any evidence in their defence. On appreciation of evidence, learned Sessions Judge convicted the present appellants and one Miarma under Sections 302/324 IPC and awarded sentence as indicated above. The other co-accused Matlab Ali was however, acquitted by the learned Sessions Judge.

7. On our assessment of the evidence and materials on record and perusal of the impugned judgment, we find that the learned trial court recorded conviction of the appellants primarily relying on the oral testimony of PW 1, PW 2, PW 3 and PW 4 as well as the medical evidence of PW 6 and 7, the doctors. The death of the victim Muslemuddin resulting from the injuries sustained was not disputed.

8. PW 1, Smti. Sakina Khatun testified that on 16th of March, at night, while they were taking meal, Miarma and appellant Rejia called Muslemuddin and took him to their courtyard. Accordingly, PW 1, her daughter-in-law, two sons and she herself followed them. She further stated that on reaching the courtyard of Rejia, both Rejia and Miarma started assaulting Muslemuddin victim. Hearing the alarm raised by PW 1, Matleb and Riyazuddin came out of their house and Riyazuddin hit Muslemuddin on his abdomen with a long iron weapon with wooden handle. When she (PW 1) tried to resist Riyazuddin, he hit the PW 1 on her chest. She further deposed that Riyazuddin attempted to hit Hasan Ali with the weapon, but when Hasan tried to ward off the attack it landed on his wrist. The people from

the neighbourhood came and shifted Hasan and Moslemuddin to Tezpur Civil Hospital. But Moslemuddin succumbed to the injuries on the way to hospital.

9. Close on the heels of the evidence of PW 1, PW 3, Ms. Amina Khatun, stated, that when Muslemuddin was called to the house of Rejia, she also followed Muslemuddin. According to her, Rejia, Miarma and Matleb squeezed Muslem's neck, as a result of which, he lost his voice. At that point of time, Riyazuddin came out of his house and stabbed Moslemuddin on his abdomen. She further stated that Riyazuddin also assaulted Sakina and Hasan.

10. PW 4, Hasan Ali stated, that while he was coming back from Mosque, at about 8 pm he noticed Miarma and Rejia assaulting Muslemuddin in their courtyard. He further stated that Rejia pressed the neck of Muslemuddin and Miarma held him from behind and at that point of time Riyazuddin and Matleb came out of their house and Riyazuddin stabbed Muslemuddin on his abdomen with kukri. PW 4 further deposed that when he came forward they also assaulted him as well as his mother.

11. PW 2, Ismail Khan, the informant, stated that hearing scream of Muslemuddin he arrived at the place of occurrence and noticed Riyazuddin, Rejia and Matleb running away from the place of occurrence. He also stated to have noticed Muslemuddin lying. According to PW 2, Muslemuddin told that Riyazuddin, Matleb and Rejia had stabbed him with dagger. However, he fairly admitted during cross-examination that he did not see the occurrence.

12. A dispassionate scrutiny of the oral testimony of these four witnesses transpires, that all the four witnesses deposed in the same tune that when Miarma and Rejia were assaulting the victim in the courtyard of Miarma, accused/appellant Riyazuddin came out of his house and stabbed the victim on his abdomen. The prosecution evidence that appellant Riyazuddin inflicted stab injury to the victim on his abdomen, which ultimately caused his death, could not be shaken during cross-examination. The medical evidence of PW 7, the doctor and the PM report (Ext.- 3) also supported the oral testimony, as to the injury inflicted to the victim.

13. PW 6, Mohesh Chetry, another doctor, who examined the persons of the PW 4, Hasen Ali and PW 1, Sokina Khatun found the following injuries :-

Hasen Ali :

Cut injury on right buttock size 2" X 1" X 1".

Sokina Kharun :

Cut injury on sternum (above waist), size 2" X 1" X 1"

14. According to PW 6 both the injuries were simple and caused by sharp weapon. Thus, the above unshaken oral testimony of PW 1, PW 2, PW 3 and PW 4 coupled with the medical evidence leaves no room for doubt that the appellant Riyazuddin inflicted the stab injury to the victim Muslemuddin, which led to his

death.

15. Above evidence establishing that the accused Riyazuddin inflicted the fatal injury to the victim has not been assailed by the defence. However, learned Amicus Curiae, Mr. Ujjal Choudhury submits that though, Riajuddin could be held responsible for causing injury to the victim Muslemuddin, which ultimately led to his death, the other appellants could not be roped in along with Riyazuddin, with the aid of Section 34 IPC, inasmuch as, there was no evidence to suggest that other accused Rejia and Miarma (since deceased) shared any common intention with the appellant Riyazuddin. Further contention of Mr. Ujjal Choudhury is that when Miarma (since deceased) and Rejia were assaulting Muslemuddin, suddenly accused/appellant Riyazuddin arrived there and dealt the single blow to the victim at the spur of the moment and as such, the intention to cause death could not be attributed to him. Had he harboured any intention to cause the death of the victim, he would not have dealt a single blow to the victim as the occurrence took place in his courtyard at night and there was ample opportunity on his part to give further blows to ensure the death of the victim. Apparently, the victim did not die at the spot and he succumbed to the injuries on the way to hospital.

16. Per contra, the submission of Ms. Shamima Jahan, learned Additional Public Prosecutor is that the evidence brought on record is sufficient to rope in all the accused persons with the aid of Section 34 IPC, inasmuch as, common intention can develop at the spur of the moment or at the scene of crime.

17. In order to convict a person or persons with the aid of Section 34 IPC, it needs to be proved, that there was prior meeting of minds of more than one person and the offence was the result of premeditated action of all the accused or that the act constituting the offence was done in furtherance of the common intention or prearranged plan of such persons. Several persons may attack a person simultaneously, but such simultaneous attack itself is not sufficient to attribute common intention, inasmuch as common intention presupposes a prior consent or a prearranged plan and commission of the act in furtherance of the common intention. In the present case, what we find from the evidence of all the four prosecution witnesses, is that Rejia and Miarma, who called the victim to their courtyard, initially assaulted the victim. There was no evidence on record to show that these two accused persons had any weapon in their hands. It was also stated by all the PW 1, PW 4 and PW 3, that while Rejia and Miarma were assaulting the victim in their courtyard, accused/appellant Riyazuddin suddenly came out of his house and stabbed the victim on his abdomen. Evidently a single blow was given to the victim by Riyazuddin. Therefore, having regard to the fact, that the occurrence took place at night in the courtyard of the appellants and initially Riyazuddin was not there at the place of occurrence and when the other appellants Rejia and co-accused Miarma, both of them being unarmed, were assaulting the victim, Riyazuddin suddenly came out from the house and gave a single blow to the victim with a sharp weapon, it is difficult to infer that the appellant Rejia or her mother, shared a common intention with the appellant

Riyazuddin to cause death or grievous hurt which may cause his death. It is to be borne in mind that similar intention and common intention are not the same. Different person may have similar intention, but in order to be common intention all the persons must have a meeting of mind and pre-managed plan to commit a particular offence. Unless there is evidence of prior meeting of mind between more than one person, common intention cannot be attributed to them, though they may have similar intention.

18. In the facts and circumstances, we find force in the submission of learned Amicus Curiae that appellants Rejia and Miarma cannot be roped in with appellant Riyazuddin in commission of the offence with the aid of Section 34 IPC. Therefore, in absence of common intention each of the accused, in our considered view, shall be responsible for their individual act.

19. It is also in the evidence of PW 3 and PW 4, that the daughter of Rejia eloped with the victim and married him against the will of their family, and as such, there was grudge and enmity between both the families. Admittedly at the beginning of the occurrence, the accused/appellant Riyazuddin was not present at the place of occurrence and only when the accused Rezia and Miarma were assaulting the victim, he suddenly came out of his house and dealt a fatal blow to the victim on his abdomen, which ultimately became fatal. It is also in the evidence that when the family members of the victim, namely, PW 1, Sakina Khatun and PW 4, Hasen Ali came to the place of occurrence, the accused Riyazuddin also assaulted them. The medical evidence of PW 6 shows, that both PW 1 and PW 4 sustained injury. Had the appellant Riyazuddin harboured any intention to cause death of the victim, he would not have left the victim after inflicting the single blow, inasmuch as, the victim did not die at the place of occurrence. Having regard to the fact that there was enmity and grudge between the parties and in the midst of the occurrence when the other accused persons Rejia and Miarma were assaulting the victim, the accused Riyazuddin suddenly intervened and gave a single blow, we of the considered opinion, that there was no intention on the part of the appellant Riyazuddin to cause death of the victim. However, from the nature of injury and the weapon used, it cannot be said that the accused Riyazuddin did not have the intention to cause such bodily injury as was likely to cause death.

20. Having considered the fact that only a single blow was given to the victim and the attending facts and circumstances, under which, the appellant dealt such blow, clearly indicating absence of any intention to cause death on the part of the appellant Riyazuddin, we are of the considered opinion, that conviction of the appellants u/S. 302 IPC recorded by learned Trial Court needs to be interfered with. Accordingly, we set aside the conviction and sentence of the accused/appellants u/S. 302 IPC, instead convict the appellant Riyazuddin u/S. 304 Part-I IPC. So far the conviction of the appellants under Section 324 IPC is concerned, we do not interfere with their conviction under Section 324 IPC. Accordingly, the sentence of the appellant Riyazuddin is modified and he is sentenced to rigorous

imprisonment for 10 years and fine of Rs. 5,000/-, in default, further imprisonment for three months u/S. 304 Part-I IPC. Since the appellant Rejia Begum has been in custody for about four years, which is more than the maximum quantum of imprisonment that may be imposed u/S. 324 IPC, she shall be released forthwith, if not required in any other case.

21. Appreciating the assistance rendered by Mr. Ujjal Choudhury, learned Amicus Curiae, we hereby provide that he will be entitled to professional fees of Rs. 7,500/- (Rupees seven thousand five hundred) upon production of a copy of this judgment. The Gauhati High Court Legal Services Committee, Guwahati shall pay the said fee to Mr. Ujjal Choudhury.

22. Send down the LCR along with a copy of the judgment to the learned Trial Court. A copy of the judgment be also sent to the Superintendent of Central Jail, Tezpur.