
(2017) 02 GAU CK 0042
In the Gauhati High Court
Case No : 7 (J) of 2013

Rocky Kalandi & another

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 06-02-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#),
[Section 34](#), [Section 304\(2\)](#) -
Punishment for murder - Acts done by several persons in furtherance of common
intention - Punishment for

Citation : (2017) 02 GAU CK 0042

Hon'ble Judges : Ajit Singh, Manojit Bhuyan

Bench : DIVISION BENCH

Advocate : R Devi, M Phukan

Final Decision : Allowed

Judgement

1. Appellants - Rocky Kalandi and Suraj Nayak have been convicted under Section 302/34 of Indian Penal Code and sentenced to imprisonment for life and fine of Rs.5000/- each, with default stipulation.

2. The victim of incident was Cheru Nayak.

3. According to the prosecution case, the appellants and Cheru Nayak worked together in Bhelaguri Tea Estate falling within the jurisdiction of Police Station Moriani, District Jorhat. On 7.9.2010, around 5.30 p.m., for some reason, the appellants assaulted Cheru Nayak at the Tea Garden and due to the assault Cheru Nayak sustained one internal head injury. On hearing the commotion, workers of the Tea Garden, namely, Birbal Kalandi (PW-2), Prema Kajhi (PW-3), Ajit Majhi (PW-4) and Gerela Majhi (PW-5) rushed to the place of occurrence. Out of these witnesses, Prema Kajhi actually saw the appellants assaulting Cheru Nayak whereas the remaining saw them standing near Cheru Nayak. Birbal Kalandi handed over injured Cheru Nayak to his brother Gezu Nayak (PW-1) and informed him about the incident. Gezu Nayak, in turn, carried Cheru Nayak to

Jorhat Medical College & Hospital, where he died on 18.9.2010 around 6 p.m. Gezu Nayak then made ejahar exhibit 1 at Deberapar Police Out Post on 18.9.2010 which was later registered as First Information Report. In the ejahar Gezu Nayak categorically named the appellants as the assailants of Cheru Nayak. During investigation, Dr. Bikramjit Baruah (PW-6) conducted the post mortem examination on the dead body. He found lacerated injury on the back of left shoulder 2 cm in size and one haematoma in left temporal lobe with depressed fracture. The doctor in his post mortem examination report exhibit-5, opined that Cheru Nayak died due to head injury.

4. Having regard to the evidence available on record, particularly the evidence of Prema Kajhi (PW-3), the learned counsel for the appellants has not assailed the prosecution story which is well founded and fully proved. We accordingly confirm the finding of the Trial Court that appellants had caused the death of Cheru Nayak.

5. The learned counsel for appellants has, however, argued that even accepting the prosecution version in totality, it cannot be said that appellants had the intention to murder Cheru Nayak and, as such, the offence will not be under Section 302 of the Indian Penal Code, but under Part-II of Section 304 of the Indian Penal Code. We find sufficient force in this submission. There is absolutely no evidence to suggest that the appellants had assaulted Cheru Nayak with any weapon. The doctor has also not opined that the head injury was possibly caused by some weapon. Even the police did not recover any weapon of offence from the appellants. Thus, the appellants possibly assaulted Cheru Nayak without any weapon but the internal head injury resulted into his death after 24 hours. Having regard to the fact situation of the case, we are unable to agree that appellants had any intention to cause the death of Cheru Nayak. It can, however, be safely held that they had the knowledge that by assaulting and causing a head injury to Cheru Nayak, he would die.

6. Consequently, we set aside the conviction of the appellants under Section 302/34 of the Indian Penal Code and sentence of life imprisonment awarded to them and instead, convict them under Section 304 Part II of the Indian Penal Code and award a sentence of 6 years rigorous imprisonment. The sentence of fine is however affirmed. The appellants are in jail and they be released on their undergoing the jail sentence awarded by us.

7. With the above modification, the appeal is partly allowed.