

(2019) 05 GAU CK 0012
In the Gauhati High Court
Case No : Criminal Appeal No. (J) 16 Of 2016

Rudra Bahadur Sonar

APPELLANT

Vs

State Of Assam And Another

RESPONDENT

Date of Decision : 06-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302, 304
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 05 GAU CK 0012

Hon'ble Judges : Achintya Malla Bujor Barua, J; Mir Alfaz Ali, J

Bench : Division Bench

Advocate : Zahingir Hussain, Barnali Bhuyan

Final Decision : Partly Allowed

Judgement

1. (AM Bujor Barua, J) Heard Mr. Zahangir Hussain, learned amicus curiae appearing for the appellant and Ms. B. Bhuyan, learned Additional Public Prosecutor appearing for the State of Assam. Office note dated 27.07.2017 shows that notice upon informant respondent No.2 had been duly served, but in spite of the same none appears for the informant respondent No.2.

2. This is an appeal against the judgment and order dated 14.12.2015 of the learned Additional Sessions Judge, Sonitpur, Tezpur, Assam passed in Sessions Case No.173/2013, whereby the accused/appellant was convicted and sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs.5000/- and in default, rigorous imprisonment for another 01(one) year for committing the offence under Section 302 IPC.

3. The prosecution case in brief is that an ejahar dated 17.05.2013 was filed before the Officer in Charge of Chariduar Police Station by Tikaram Sonar inter-alia stating that on the said day at about 5. P.m. his nephew Rudra Sonar had killed his father Dharam Sing Sonar on the spot by dealing a knife blow in their house. Accordingly, the accused appellant was charged of committing an offence

punishable under Section 302 IPC.

4. PW-1 Tika Ram Sonar, the informant stated that he was in the field with his cows at a distance of ½ kilometer from the place of occurrence when the wife of the accused namely Tulshi Devi called him to come to their residence. When he went there, he saw the accused after committing the offence was wiping the blood from the knife. He also saw some cut injuries on the neck of the deceased. In cross examination, PW-1 stated that the accused and the deceased although they are father and son used to live separately after the son had a quarrel with his father.

5. PW-2 Laxmi Sonar, who was one of the daughters in law of the deceased had stated that at the time of occurrence she was in the house of her uncle Tika Ram Sonar, which was adjacent to their residence. At that time when she was having tea, two of her daughters went to the house of her father-in-law and therefore she had gone to bring back her daughters and at that time saw the accused was hitting her father-in-law on the right side of his chest with a Chaku. She also deposed that at that time, the accused had restrained her and had also told her that if she narrates the incident to anyone, he would also kill her. In cross examination, PW-2 stated that it is a fact that she did not see the accused committing the offence of hitting her father-in-law and further that it takes about 10 minutes to go to the house of her father-in-law from the house of her elder brother in law.

6. PW-9 Sumitra Sonar, the wife of the accused in her deposition stated that her husband had killed her father-in-law by dealing knife blows and further that she had noticed a knife in the hand of her husband. She deposed that at the time of the incident, she was at home and was washing dishes and when she came inside, she saw blood on the floor and Dharam Singh was lying dead inside the house. In cross examination, PW-9 had stated that there was frequent quarrel between the son i.e. her husband who is the accused and his father. In cross examination PW-9 stated that she did not see who had killed Dharam Singh and how.

7. From the deposition of PWs-1, 2 and 9, it is discernible that none of the witnesses had seen the actual occurrence, but had reached the place of occurrence immediately after it had taken place and PW-1 and PW-9 saw the accused person with a knife in his hand. From the evidence of PW-1 and PW-9, it is also discernible that there was some kind of quarrel between the accused and the deceased and further that because of such quarrel, the accused and the deceased although otherwise they are father and son, the accused started living separately. All the other prosecution witnesses had also reached the place of occurrence after the event had taken place and none of them had seen the occurrence.

8. In his statement under Section 313 Cr.P.C, the accused had admitted that he had killed the deceased. Further against the question No.18 as to why he had

killed his father, the accused stated that his father had forcibly drowned his five years old daughter in a pond under influence of liquor and because of that he got angry and killed him by dealing a knife blow.

9. If we take the statement of the accused under Section 313 Cr.P.C that he had killed his father, we find that the same is also to a extent corroborated by PW-1 and PW-9 to the extent that he was seen with a blood smeared knife in his hand at the place of occurrence immediately after the occurrence had taken place. But at the same time, if we are relying upon the admission of the accused under Section 313 Cr.P.C that he had killed the deceased, we also take note of the reason given by the accused against question No.18 in his statement under Section 313 Cr.P.C that his deceased father had forcibly drowned his five years old daughter in a pond under influence of liquor and because of such incident he got angry and killed him by dealing the knife blow. Although such stand of the accused under Section 313 Cr.P.C is not corroborated by any other evidence of the prosecution witnesses regarding the drowning of his five years old daughter, but at the same time a definite evidence is also available that there were and was a quarrel between the accused and the deceased. Because of it being available on record through the prosecution witnesses that there was a quarrel between the accused son and the deceased father, we cannot wholly rule out the possibility of the explanation given by the accused that he had killed the deceased as because he got angry as his father had forcibly drowned his five years old daughter in a pond.

10. To that extent, we are of the view that the accused appellant could satisfy that the occurrence had taken place without a premeditation in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken any undue advantage or acted in a cruel or unusual manner. But having said so, we are also of the view that in the manner the offence was committed, the accused appellant had the intention of causing the death to the deceased.

11. The medical evidence reveals that there was a sharp incised wound over the left supra clavicular region. The incised wound is deep and directing upward below with multiple injuries seen in the upper lobe of left lung with haemothorax and lacerated injuries over the upper chamber of the heart with collection of blood in pericardium. The nature of the injuries caused by a knife in the manner in which it was done leads us to a conclusion that in doing so the accused appellant had committed the assault with the intention of causing death to the deceased.

12. Accordingly, we modify the conviction of the accused appellant in the judgment and order dated 14.12.2015 convicting him of an offence under Section 302 IPC and bring it down to a conviction under Section 304 Part-I of the IPC. Considering the manner in which the offence was committed and also taking into account the mitigating circumstance which may go in favour of the accused appellant as regards the death caused to his five years old daughter by the deceased, we sentence the accused appellant to a rigorous imprisonment of

10(ten) years by retaining the fine of Rs.5000/- and in default of payment of fine, another rigorous imprisonment for 01(one) year as imposed by the learned Additional Sessions Judge, Sonitpur, Tezpur in Sessions Case No.173/2013.

13. Accordingly the appeal stands partly allowed by modifying the conviction as well as the sentence as stated above.

14. Send back the LCR along with a copy of this judgment immediately.

15. Before parting with the record, we appreciate the valuable service rendered by Mr. Zahangir. Hussain, learned Amicus Curiae. Accordingly, it is directed that an amount of Rs.7,500/- as legal fees be paid to him by the High Court Legal Service Committee upon production of a copy of this judgment and order.