
(2015) 01 GAU CK 0034
In the Gauhati High Court
Case No : Criminal Appeal No. 42 of 2011

Sale Ahmed and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (2015) 1 GLT 421

Hon'ble Judges : C.R. Sarma, J; M.R. Pathak, J

Bench : Division Bench

Advocate : A.M. Buzarbaruah, Senior Advocate and S. Saikia, for the Appellant;
S. Jahan, APP, Advocates for the Respondent

Judgement

C.R. Sarma, J.

1. This appeal is directed against the Judgment and Order dated 10.01.2011, passed by the learned Additional Sessions Judge (FTC), Biswanath Chariali, in Sessions Case No. 123/2006, whereby the learned Sessions Judge, convicted the appellants under Section 302 of the Indian Penal Code (for short, IPC) and sentenced each of them to suffer imprisonment for life and pay fine of Rs. 2000/-, in default, suffer rigorous imprisonment for another period of 60 days. Aggrieved by the said conviction and sentence, the convicted persons, as appellants, have come up with this appeal.

2. We have heard Mr. A.M. Buzarbarua, learned Sr. Counsel, assisted by Ms. S. Saikia, appearing for the appellants and Ms. S. Jahan, learned Additional Public Prosecutor, Assam, appearing for the State of Assam.

3. The prosecution case, in brief, is that, on 09.04.2004, at about 6.30 A.M., when Mr. Bisha Ali (since deceased) was ploughing land, his sons Mr. Sahabuddin and Mr. Rafikul, (both, hereinafter, called the "deceased persons") being armed with Tdianti" (crowbar) and khukri (machete) appeared there and stopped their

father from ploughing, as a result of which a quarrel took place with regard to the land dispute. The appellants Md. Sale Ahmed, Md. Sahajuddin Ali (since deceased) and Md. Ibrahim Ali, all sons of Late Bisha Ali, being armed with lathi, iron rod, crowbars, joined their father Bisha Ali and assaulted the informant's father Mr. Sahabuddin and his uncle Mr. Rafiqul causing their death.

Mr. Jahir Ahmed, a son of Mr. Sahabuddin, who was also the grand son of late Bisha Ali, lodged the F.I.R. (ejahar) with the Police. Police after registering a case, being Case No. 53/2004, under Sections 147/148/149/447/302 IPC, launched investigation into the case and submitted charge-sheet against Md. Bisha Ali (since deceased), Md. Sale Ahmed, Md. Sahabuddin Ali, Md. Ibrahim Ali and Md. Osman Ali. In the said charge-sheet, accused Osman Ali has been shown as an absconder. The offence, under Section 302 IPC, being exclusively triable by the Court of Sessions, the learned Magistrate after separating the case against absconder Md. Osman Ali and keeping the same as filed, committed the case, so far it related to Md. Sale Ahmed, Md. Sahajuddin Ali and Md. Ibrahim Ali, to the Court of Sessions.

4. The learned Sessions Judge framed charges under Sections 148/447/302/149 IPC. The charges were read over and explained to the accused persons, to which they pleaded not guilty and claimed to be tried. During the trial, Mr. Bisha Ali died.

5. The prosecution examined as many as 9(nine) witnesses. Thereafter, the accused persons were examined under Section 313 Cr.P.C. They denied the allegations, brought against them and examined accused Md. Sahajuddin Ali as defence witness (D.W. No. 1).

6. Considering the evidence, on-record, the learned Sessions Judge, while acquitting Md. Sahajuddin Ali, convicted and sentenced Md. Sale Ahmed and his brother Mr. Ibrahim Ali and sentenced them as indicated above. Hence, this appeal.

7. Mr. A.M. Buzarbarua, learned Sr. Counsel, appearing for the appellants, has submitted that there is no substantive evidence to show that the appellants had caused the murder of the deceased persons. The learned Sr. Counsel, referring to the evidence, on-record more particularly the evidence of PW-1 (informant) has submitted that the deceased persons (victims), who were armed with crowbar and khukri were the aggressors and that the incident took place due to attack made by the deceased persons, on late Bisha Ali, who was ploughing at that time. Therefore, it is submitted that the occurrence was the outcome of the land dispute initiated and the attack made by the deceased persons and that the deceased persons sustained the injuries, in a sudden quarrel and spur of moment and as such the conviction under Section 302 IPC can't be maintained.

8. Ms. S. Jahan, learned Additional Public Prosecutor, supporting the impugned judgment and order aforesaid has submitted that PW-1, who was an eye witness to the occurrence, clearly implicated the appellants and that his evidence has

been corroborated by PW-2. It is also submitted that, undisputedly, a quarrel took place, prior to the occurrence, regarding right to plough over the disputed land and that the appellants had assaulted the father and the uncle of the informant causing their death. The learned Additional Public Prosecutor has submitted that there are sufficient substantive evidence against the appellants and that the learned Sessions Judge committed no error or illegality by recording the conviction and sentence, as indicated above.

9. Having heard the learned Counsel, appearing for both the parties, we have carefully perused the evidence, on-record. Except the oral evidences, given by PW Nos. 1 and 2, there is no other direct evidence regarding involvement of the appellants with the death of the deceased. Of course, there is no dispute that a quarrel had taken place between both the parties in connection with ploughing the disputed land by Bisha Ali (since deceased), who was the father of the appellants and the deceased.

10. Mr. Jahir Ahmed, who was the grand son of late Bisha Ali and son of deceased Sahabuddin lodged the FIR. He has exhibited the said FIR as Ext. No. 1. The informant, deposing as PW-1, stated that, at about 6 a.m., on 09.04.2004, when his grand father Bisha Ali was ploughing the land, his (PW-1 "s) father went to the field and stopped his father Bisha Ali from ploughing. He further stated that Bisha Ali had assaulted his said son i.e. the informant's father with a goading stick and that, other accused persons i.e. Saleh Ahmed, Sahajuddin and Ibrahim arrived there with khanti (crowbar) and assaulted Rafiul causing his death. He also stated that his father (one of the deceased persons) was hit by Saleh Ahmed on his head with a iron rod and by Ibrahim with a crowbar, as a result of which the informant's father died on the spot. He further stated that, on being threatened by Mr. Osman Gani (absconder), he ran home. According to this witness, his mother i.e. PW-2 also arrived at the place of occurrence and thereafter, he had lodged the FIR (Ext. 1).

This witness, in his cross-examination, stated that there was a standing land dispute between his father and uncles regarding their land and that his grand father wanted to sell the land in favour of Md. Sahed Ali. He further stated that he along with his uncle Md. Rafilul (since deceased) went to the place of occurrence with khukri (sharp cutting weapon) in their hands and that his uncle and father had released the bullocks from the yolk, used by Bisha Ali, in ploughing the land.

11. From the said evidence of PW-1, it appears that a quarrel had taken place between both the parties and that the deceased had attacked the appellant's father Bisha Ali and stopped him from ploughing the land. From his evidence, it transpires that, the deceased persons had initiated the quarrel in connection with ploughing of the land by Bisha Ali i.e. the father of the appellants. Hence, it appears that the appellant had assaulted the deceased following the quarrel, which took place between them.

12. Mrs. Joymat Begum, mother of PW-1, stated that her husband and Rafiquel (both deceased) went to the field and stopped Bisha Ali from ploughing. She further stated that Sahajuddin (since acquitted) hit Rafiquel with a crowbar and Saleh Ahmed made attempt to assault Sahabuddin but the dagger blow landed on Sahajuddin instead of Sahabuddin. She further stated that Ibrahim Ali assaulted Sahabuddin with a dao and Saleh Ahmed hit him on the head with a crowbar.

13. Though PW-1 stated that his father was assaulted by Bisha Ali with a goading stick, PW-2, who claimed to be one of the eye witness stated that Bisha Ali had assaulted Rafiquel with a lathi. She did not state anything regarding assault on her husband i.e. father of PW-1 by Bisha Ali. Considering the attending facts and circumstances of the case, such minor discrepancies can't negate the prosecution version. The evidence of PW-1 and PW-2 sufficiently indicate that a quarrel had taken place between both the parties and that the deceased persons sustained injuries due to the said quarrel.

14. A careful reading of the evidence of PWs-1 and 2, leads to the finding that the deceased persons sustained the fatal injuries at the hands of the appellants.

15. In view of the above, we find sufficient corroboration in the evidence of PWs-1 and 2 to believe that the deceased persons i.e. Sahabuddin and Rafiquel died due to the assault caused by the appellants.

16. PWs-3, 4, 5, 6 and 7 did not have any personal knowledge about the involvement of the appellants. They came to know about the incident after the occurrence. They found the dead body of the deceased lying in the place of occurrence. Their said evidence reveals that the deceased died due to the injuries sustained by them in the said occurrence.

17. The Medical Officer, who performed the autopsy, on the dead body of Sahabuddin Ali, found the following injuries:

"(i) Lacerated injury with depression of left temporo-parietal region of the head 3 X 1/2" x 1/2" X bone deep in size, obliquely. Blood clot present.

(ii) Depressed fracture of parietal and temporal bone with multiple bone fragment on the left side. Brain matter coming out through the wound.

Cranium and spinal canal:--

Scalp and skull:--Lacerated injury with depressed fracture with multiple fragment of bone on the left side head as described.

Membrane-congested and lacerated.

Brain and spinal cord-Brain-injured and brain matter coming out through the wound.

The injuries were found to be ante mortem in nature and caused by heavy blunt weapon.

Death was due to shock and hemorrhage as a result of injuries sustained.

The said Medical Officer also performed the autopsy on the dead body of Rafiqul Islam and found the following injuries:

(i) Lacerated injury present over the temporo-parietal region of the head obliquely 5" x 1" x bone deep. Clotted blood present.

He opined that the deceased died due shock and hemorrhage as a result of the following injuries sustained by him.

Skull-depressed fracture with multiple bone fragments of parietal and temporal bone on the left side.

Membrane - congested and lacerated.

Brain and spinal cord-Sub-dural blood clot depressing over the brain matter of the left side with injury of the brain.

According to the Medical Officer, the injuries were ante-mortem, in nature and were caused by heavy blunt weapon.

Death was due to shock and hemorrhage as a result of injuries sustained by the deceased."

18. The said medical evidence clearly indicates that the deceased person died due to the injuries inflicted by heavy weapons like dao, crowbar, iron rod etc.

The said medical evidence supports the evidence of PW-1 and PW-2 regarding the type of weapons used and the injuries alleged to be caused by the accused persons.

19. The Investigating Officer (for short, I.O.), who conducted the investigation, stated that he seized a crowbar, made of iron rod, and khukri (Ext. No. 6). Though the I.O. was cross-examined, on behalf of the defence, no major contradiction, in respect of the evidence given by PWs-1 and 2 could be proved to discredit their evidences. The said seizure, made by the I.O. also supports the evidence of the PW-1 and PW-2 regarding the use of the weapons as indicated by PW-1 and PW-2.

20. Mr. Sahajuddin Ali, one of the accused person (since acquitted), while admitting the prosecution version regarding the quarrel in connection with ploughing of the land by Bisha Ali, stated that both Rofiqul and Sahajuddin had attacked them with khukri and crowbar causing injuries to their persons and that both Sahabuddin and Rofiqul died in the said quarrel. His said evidence remained undemolished. Hence, it has been established that the deceased were the first attackers.

21. From the above discussed evidence, it is found that the occurrence took place due to a quarrel, which took place between both the parties, regarding the ploughing of the land by Bisha Ali. As stated by PW-1, both the deceased,

appeared in the place of occurrence with weapons i.e. crowbar and khukri i.e. sharp cutting weapons and they resisted Bisha from ploughing. Their appearance with such weapons indicates that they had provoked the appellants and initiated the quarrel.

22. From his evidence, it is clearly found that both the parties had assaulted each other and the deceased sustained the fatal injuries resulting their death, in the place of occurrence. The said evidence, clearly indicates that both the deceased, being armed with weapon, had resisted Bisha Ali from ploughing the land. It is found that the appellants, who were also the sons of Bisha Ali rushed to the place of occurrence to resist the appellants from restraining Bisha Ali in ploughing the land. Had they not visited the place of occurrence with weapons like khukri and crowbar etc., the incident, probably, would not have taken place resulting the death of the deceased. Therefore, considering entire aspect of the matter, we are inclined to hold that the deceased were the aggressors and the occurrence took place due to the said attack made by them.

23. In view of what has been discussed, we find no sufficient material to hold that the appellants had any premeditation to cause the death of their brothers, namely, Sahajuddin Ali and Rofiqul. The dispute related to right to enjoy the disputed land. Therefore, in our considered opinion, the occurrence took place in a sudden quarrel and hit of passion.

24. In view of the above, we have no hesitation in holding that the offence, committed by the appellants, will not fall under Section 302 IPC. Therefore, the conviction and sentence, under Section 302 IPC, can not be maintained. The impugned conviction under Section 302 IPC and the sentence of life imprisonment are set aside. The entire facts and circumstances of the case and the above discussed evidence indicate that the appellants assaulted the deceased persons with sharp cutting and heavy weapons, on vital points of the body. Hence, the type of the weapons used and the nature of the injuries caused lead to believe that the appellants had the knowledge that such injuries were likely to cause death of the victim. Therefore, the offence committed by the appellants will fall under Section 304 Part (II), IPC. Accordingly, we modify the conviction to one under Section 304 Part (II) IPC and sentence each of them to suffer rigorous imprisonment for 7 (seven) years. We make no interference with regard the sentence regarding the fine. Return the LCR.