

(2016) 08 GAU CK 0073

In the Gauhati High Court

Case No : Criminal Appeal No. 95 (J) of 2014.

Santosh Gosai - Appellants/Accused @HASH State of Assam and Another

Date of Decision : 17-08-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 5 GauLJ 506 : (2016) 5 GauLR 806

Hon'ble Judges : Ajit Singh, CJ. and N. Chaudhury, J.

Bench : Division Bench

Advocate : Ms. Krishna M. Phukan, learned Amicus Curiae, for the Appellant/Accused; Ms. Shamima Jahan, learned Additional Public Prosecutor, Assam, for the Respondents

Final Decision : Allowed

Judgement

Ajit Singh, C.J. - Appellant Santosh Gosai has been convicted under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and fine of Rs.5,000/- with default stipulation. The other co-accused persons, namely, Birendra Gosai and Mangal Gosai have been acquitted by the trial court of the charges.

2. The victim of the incident was Bijoy Munda, aged about 30 years.

3. According to the prosecution case, on 15.4.2002, around 2.30 PM, on the side of village road, appellant dealt dao blows on the neck of Bijoy Munda due to which, he died on the spot. At that time, co-accused persons, Birendra Gosai and Mangal Gosai had caught hold of Bijoy to facilitate the appellant in hacking him. Ejahar exhibit 2 of the incident was made by father Budhu Munda of Bijoy at Gumrah Investigation Centre, which was later registered as First Information Report. Budhu was not an eye witness to the incident though he named the appellant as assailant of Bijoy. Budhu stated in the ejahar that appellant, who is of neighbouring village, out of previous grudge, killed Bijoy with a dao. The police rushed to the place of occurrence and made the inquest exhibit 5 on the dead body of Bijoy. The dead body of Bijoy was then sent for postmortem examination. Dr. Gunojit Das (PW-11) conducted the postmortem where after,

he, in his report exhibit 6, opined that Bijoy died due to cut injuries in the neck. The police arrested the appellant on 16.4.2002 and seized one dao from his possession.

4. During the trial, the appellant abjured his guilt and pleaded false implication.

5. The trial court mainly relying upon the evidence of Mantu Orang (PW-3), Suresh Orang (PW-1) and Gulomoni Orang (PW-2) convicted and sentenced the appellant as aforesaid. As stated above, the trial court did not believe these witnesses as regards co-accused persons, namely, Birendra Gosai and Mangal Gosai and acquitted them of the charges.

6. Mantu Orang has been examined by the prosecution as eye witness to the incident. We shall, therefore, first see whether his evidence is truthful and can be relied upon. This witness says that on the date of incident at about 2.30 PM, while he was going to the house of Dulatia Orang and had reached half of the road, he heard commotion from the road side. He then saw Birendra and Mangal with the appellant who had dao in his hand. According to him he also saw Birendra and Mangal had caught hold of Bijoy while Santosh dealt a dao blow on his neck due to which he fell down. He further says that all of them then fled and he came back to his house. In the cross examination Mantu admitted that he did not go to the spot and no one came there till he was there. He also admitted that after seeing the incident, he returned home and did not report the matter to police or anybody except to his family members. Apparently, the conduct of this witness does not seem to be natural. According to his own admission, the assailants after committing the crime, had fled from the place of occurrence. Therefore, had he really seen the incident, he would have either immediately rushed to the victim to provide help or went to the police or to the family members of victim and narrated the incident. But instead he did nothing of this kind and quietly went to his house. Then how the police came to know that he is an eye witness is a mystery. The evidence of Mantu that he narrated the incident to his family members is also doubtful because none of them have been examined. Even, Budhu Munda did not say in his ejahar that he came to know from this witness about Bijoy being hacked by the appellant. Moreover, as seen above, the trial court did not find his evidence reliable in respect to Birendra and Mangal and acquitted them. In the fact situation of the case, if the evidence of Mantu was not found to be reliable and trustworthy against Birendra and Mangal, we find difficult to believe his evidence against the appellant also.

7. The other two co-accused on whose evidence the trial court has placed reliance are - Suresh Orang (PW-1) and Gulomoni Orang (PW-2). Gulomoni although is from another village, she was in the house of Suresh, because he is her brother in law. The incident took place below the house of Suresh, which is on a hillock. According to the evidence of Suresh, on the date of incident, at about 2.30 PM, he and Gulomoni heard the cry of Sanichari (daughter of Birendra) where after they came out from the house and saw Santosh, Mangal and Birendra running towards their house and at that time, Santosh was having

a blood stained dao in his hand. Suresh has testified that on reaching the place of occurrence, they saw Bijoy lying on the road with a cut injury on throat and at that time, family members of Bijoy had also reached there. This witness has admitted that father Budhu Munda of Bijoy had lodged the ejahar at Police Station where after police came and investigated the incident. Similar is the evidence of Gulomoni. Admittedly, neither Suresh nor Gulomoni have seen the appellant killing Bijoy. They only claim to have seen appellant running away from the place of occurrence with a dao in his hand along with Birendra and Mangal. According to them, family members of Bijoy had reached the place of occurrence during their presence. In that case, they must have narrated what they saw to the family members of Bijoy. And in the ejahar lodged by Budhu Munda, names of Birendra and Mangal would have surely been mentioned along with the name of appellant as the assailants of Bijoy. But their names are nowhere mentioned in the ejahar. Budhu has not been examined by the prosecution to establish from whom he came to know about the incident. As mentioned above, Birendra and Mangal, who were seen running away from the place of occurrence along with the appellant, have been acquitted by the trial court. At that time, appellant was allegedly carrying a blood stained dao in his hand. But although the appellant was arrested on the next day and dao was seized from his possession, there is no evidence to show that it was stained with blood. We, therefore, find the evidence of even these two witnesses not trustworthy to sustain the conviction of appellant.

8. For these reasons, we set aside the impugned judgment of conviction and sentence of appellant. He is acquitted of the charges. The appellant is in jail. He be released from jail forthwith, if not wanted in any other case.

9. The appeal is allowed.