
(2018) 06 GAU CK 0068
In the Gauhati High Court
Case No : Criminal Appeal No. 151 of 2017

Sher Bahadur Newar	Vs	APPELLANT
State Of Assam And Anr		RESPONDENT

Date of Decision : 14-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302

Citation : (2018) 06 GAU CK 0068

Hon'ble Judges : AJIT SINGH, J;ACHINTYA MALLA BIJOR BARUA, J

Bench : Single Bench

Advocate : R Jain, M Phukan

Final Decision : Allowed

Judgement

Ajit Singh, C.J

1. The appellant, namely, Sher Bahadur Newar has been convicted under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and fine of Rs.30,000/- with default stipulation.

2. The victim of the incident was Ratneswar Bahadur Roy @ Ratna Bahadur Roy, aged about 65 years. He was resident of village Ladoigarh within the district of Sivasagar, Assam and was a co-villager of the appellant.

3. According to the prosecution case, Ratna Bahadur Roy used to stay in his house with his two workers Kasta Praja (PW-8) and Rupeswari Praja

(PW-9)-wife of Kasta Praja. On 17.09.2008, Ratna Bahadur Roy decided to sleep outside in the veranda whereas both Kasta Praja and Rupeswari

Praja slept inside the house. But at about 11.00 p.m., Kasta Praja found Ratna Bahadur Roy dead on his bed in a pool of blood with multiple cut

injuries on his head. Kasta Praja and Rupeswari Praja being horrified immediately

rushed to the house of Prem Bahadur Chetry (PW-2) and informed him about the occurrence. Then Kasta Praja and Prem Bahadur Chetry together went to the house of Dil Bahadur Newar (PW-1), Village Defence Party Secretary andÂ informed him also about the incident. Dil Bahadur Newar in turn lodged First Information Report Exhibit-1 at Namtola Police Check-post stating inter-alia that the villagers had informed him about the death of Ratna Bahadur Roy due to hacking with a dao by some unknown person. The same was subsequently registered at Sonai Police Station vide Case No. 209/2008. In the meantime, hearing about the horrific crime other villagers also gathered at the place of occurrence.

4. Sub-Inspector Ashim Bora (PW-10) came to the place of occurrence and got the inquest over the dead body Dil Bahadur Chetry done in presence of Dil Bahadur Newar, Lakshman Subba (PW-3) and Bikram Rai (PW-4). Thereafter, Ashim Bora sent the dead body for post-mortem examination.

He also recorded the statements of witnesses, drew sketch map Exhibit-5 and took up investigation. On the next day morning, Ashim Bora arrested

the appellant. A dao was also seized vide Exhibit-2 seizure list in presence of Dil Bahadur Newar and Tilu Kanta Karki (PW-5) and the same was

sent for serological test. However, subsequently Exhibit-6 serological test report on the seized dao gave negative result for human blood.

5. Dr. Ritwick Chetia (PW-8) conducted the post mortem examination on the dead body of Ratna Bahadur Roy. He found multiple cut injuries on scalp

of frontal and parietal region as well as on skull of various sizes on the dead body and opined that death was due to shock as a result of those injuries.

His post mortem examination report is Exhibit 4. After completing the investigation and collecting the post mortem examination report as well as

forensic laboratory report, Ashim Bora submitted Exhibit 7 charge-sheet against the appellant for an offence under Section 302 of the Indian Penal

Code.

6. During trial, the appellant abjured his guilt and pleaded false implication. But the trial court relying upon the evidence adduced by the prosecution

especially Kasta Praja and Rupeswari Praja convicted and sentenced the appellant as aforesaid.

7. Ms. R Jain, learned counsel for the appellant has argued that the trial court erroneously relied upon the evidence of Kasta Praja and Rupeswari

Praja in convicting him because both these witnesses in their earlier police case diary statements stated that some unknown person had hacked Ratna

Bahadur Roy. The learned Additional Public Prosecutor, on the other hand, defended the conviction and sentence of the appellant as passed by the trial court.Â

8. After hearing the learned counsel for the parties and perusing the records, we find that both Kasta Praja and Rupeswari Praja have claimed to be

eye witnesses. Kasta Praja deposed that on the night of occurrence, he and Rupeswari Praja were about to sleep and Ratna Bahadur Roy went to

sleep outside in the verandah. Then, the appellant came and assaulted Ratna Bahadur Roy with a dao. Seeing this when he and Rupeswari Praja

came out, the appellant ran away. Thereafter, he informed Dil Bahadur Newar about the occurrence. But, during his cross-examination, he admitted

that earlier during investigation he had stated that some person had come and cut Ratna Bahadur Roy.

9. Rupeswari Praja has also deposed that she and Kasta Praja were sleeping inside the house and Ratna Bahadur Roy was sleeping outside in the

verandah. Then a hue and cry was raised and Kasta Praja woke her up whereafter she saw the appellant inflicting three dao blows on Ratna Bahadur

Roy. She further deposed that the appellant asked them not to raise any alarm and then she and Kasta Praja fled and informed others whereas the

appellant escaped with the dao. But this witness also in her statement before police stated that some unknown person had hacked Ratna Bahadur

Roy.

10. If both Kasta Praja and Rupeswari Praja had actually seen the appellant hacking Ratna Bahadur Roy, they would have definitely said so to Prem

Bahadur Chetry, whom they immediately met and narrated the incident. But they did not do so. Prem Bahadur Chetry has categorically deposed that

when he specifically asked Kasta Praja as to who hacked Ratna Bahadur Roy, Kasta Praja told him that he could not see the assailant as it was too

dark. Again, Kasta Praja and Prem Bahadur Chetry did not tell Dil Bahadur Newar too, as to who had hacked Ratna Bahadur Roy. Rather, both of

them stated that some unknown miscreant had hacked Ratna Bahadur Roy. Dil Bahadur Newar, therefore, stated in the First Information Report that

he had been informed that some unknown miscreant had hacked Ratna Bahadur

Roy with a dao.

11. Besides, other villagers namely Lakshman Subba, Bikram Rai, Tilu Kanti Karki and Ramay Chetry (PW-6), who assembled at the place of

occurrence immediately after the occurrence, were also not told by Kasta Praja and Rupeswari Praja that they indeed saw the appellant hacking

Ratna Bahadur Roy and as such it is unbelievable that Kasta Praja and Rupeswari Praja did actually see the appellant hacking Ratna Bahadur Roy.

Their evidence is out and out afterthought and subsequent developments in the court which materially contradict their earlier versions made before the

police. The appellant being co-villager was well known to both Kasta Praja and Rupeswari Praja and as such there is no reason why they had

concealed his identity immediately after the occurrence. The fact of non-disclosure of the identity of the appellant at the first instance immediately

after the occurrence and naming him subsequently after a long time gap only during trial casts a serious doubt on the evidence of both Kasta Praja

and Rupeswari Praja making them liable to be discarded.

12. Even, the dao which was seized did show negative test result about the presence of human blood on it and this would further remove the cloud of

the remotest doubt on the appellant regarding his involvement in the crime. Even the seizure witnesses have not made a single whisper as to from

where the dao was seized and there is absolutely nothing on record to show that the dao was seized from exclusive possession of the appellant.

13. As such, we are of the considered view that there is no evidence at all against the appellant and hence, the trial court committed an illegality in

convicting him. The appellant is held not guilty and he is acquitted of the charge. We, accordingly, set aside the impugned conviction and sentence.

The appellant is on bail. He need not surrender to custody.

14. The appeal is allowed.