
(2009) 01 GAU CK 0016
In the Gauhati High Court
Case No : Criminal Appeal No. 222 of 2004

Shri Niranjana Mali @ Shri Niren Das and Others	APPELLANT
Vs	
State of Assam	RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 324, 325, 34

Citation : (2009) 1 GLD 537 : (2009) 2 GLT 434

Hon'ble Judges : C.R. Sharma, J;Aftab H. Saikia, J

Bench : Division Bench

Advocate : J.M. Choudhury, B.M. Choudhury and K. Bora, for the Appellant; K.C. Mahanta, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Aftab H. Saikia, J.—Heard Mr. B.M. Choudhury and Ms. K. Bora, learned Counsel for the Appellants and Mr. K.C. Mahanta, learned Public Prosecutor, Assam, for the opposite party.

2. This appeal is directed against the judgment and order dated 28.6.2004 passed by the learned Sessions Judge, Kamrup, Guwahati, (hereinafter referred to as "the learned Judge"), in Sessions Case No. 58(K)/2001 whereby all the three accused Appellants herein namely, Appellant No. 1. Shri Niranjana Mali @ Niren Das, Appellant No. 2 Shri Prabin Mali and Appellant No. 3 Shri Babul Mali (hereinafter referred to as "A-1", "A-2" and "A-3" respectively) were convicted under Sections 302/ 34 of the Indian Penal Code for committing murder of one Narmeswar Das @ Suku (hereinafter referred to the "the deceased") and accordingly sentenced them to undergo imprisonment for life and fine of Rs. 2,000/- (Rupees two thousand) each in default to suffer rigorous imprisonment for another one year.

3. It was alleged in the FIR (Ext. 1) dated 10.5.1997 lodged by one Jatin Chandra Das (PW 2) with the Chaygaon Police Station alleging that at about 8.00

a.m. on the very day i.e. on 10.5.1997 while the complainant (PW 2) was working at his land, Appellant Niranjan Mali @ Niren Das (A-1) alongwith his two brothers, being armed with dao and lathi inflicted severe injuries on his brother, i.e. the deceased and him by beating. Finding no way out, the complainant somehow managed to reach the Bijohnagar thana. Those accused Appellants inflicted injuries on his left hand by hacking with dao. On the basis of the FIR (Ext. 1), a case was registered by the police as Chaygoan P.S. Case No. 67/97 under Sections 447/ 324/ 325/ 34, IPC and police started investigation into the case. However, the deceased succumbed to those injuries.

4. The police having completed investigation has submitted the charge-sheet against all these three accused Appellants under Sections 302/ 34 read with Section 324 of the IPC.

5. During trial, the prosecution examined as many as 12 (twelve) witnesses including three-eyewitnesses namely, Shri Jatin Das (PW 2), Shri Sunil Das (P W 3), Shri Pratil Das (PW 5). Dr. Pratul Ch. Chakraborty (PW 9), who examined the injured, Shri Tarun Kalita (PW 10), the Investigating Officer (IO) and Dr. Kanak Chandra Das (PW 11), who conducted autopsy on the dead body of the deceased, were examined as official witnesses.

6. The learned Judge having appreciated the testimony of all the witnesses of the prosecution and upon hearing the learned Counsels for the parties found the Appellants guilty of commission of offence charged under Sections 302/ 34, IPC and convicted and sentenced them accordingly as indicated hereinabove.

7. Assailing the impugned conviction and sentence, Mr. Choudhuary, learned Counsel for the Appellants has strenuously argued that on close scrutiny of the evidence of witnesses so adduced by the prosecution, particularly, the eye-witnesses, i.e. PWs 2, 3 and 5, it is to be noted that they did not disclose any such convincing or sufficient materials so as to indict all the three Appellants for commission of offence u/s 34 of the IPC and thereby to convict them u/s 302 of the IPC. The basic thrust in his argument is that the entire episode happened due to the sudden quarrel erupted in between the parties and the same was very much evident from the deposition of those witnesses, more particularly from the deposition of those eye-witnesses as mentioned above. Admittedly, it is also a case of the prosecution that there was a dispute and quarrel in between the Appellants' group as well as the group of the deceased as regard the cutting of a path in the field of cultivation and it also came into the record that a cross case was filed by the Appellants against the deceased's group and that has been reflected from the evidence of PW 2, who in his cross examination stated that, a GR Case No. 2311/1997 was also filed against them. That apart, relying on the medical evidence of PW 11, who asserted that the deceased suffered a single fatal injury, it is contended that it would reflect that though in the FIR (Ext. 1) it was mentioned that all the three Appellants armed with dao and lathi inflicted injuries on the person of the deceased, the deceased suffered only a single injury, when there ought to have been much more injuries including incised

injuries giving rise to multiple injuries keeping in view the weapons used, as alleged. On the other hand, the versions of the eye-witnesses, i.e. PWs 2, 3 and 5 respectively, would categorically indicate that it was "A-1", who inflicted single fatal injury on the body of the deceased by a wooden batten. The other two Appellants, basically "A-2" and "A-3" (Shri Prabin Mali and Shri Babul Mali) did not participate in the incident. Hence, it cannot be a case of Section 302 of the IPC. At best, it may be a case of Section 304 Part-II against the accused Appellant "A-1". It is vehemently submitted that not a single witness did mention any word even as regards to involvement of the other two accused-Appellants "A-2" and "A-3" by their active participation so as to attract Section 34 of the IPC. Keeping in view the facts and circumstances of the case, these two accused Appellants "A-2" and "A-3" who were already gone on bail, deserve acquittal.

8. In support of the impugned conviction and sentence, Mr. Mahanta, learned Public Prosecutor, has forcefully submitted that there were no irregularities or inconsistencies found in the impugned judgment and order, so rendered by the learned Judge. According to him, the evidence of these witnesses, more particularly the eye-witness, i.e. PWs 2, 3 and 5 on the basis of which the Appellants' conviction and sentence were founded, was reliable, believable and credible. The learned single Judge was justified and correct to arrive at a conclusion that all the three accused persons were involved in the offence of crime under Sections 302/ 34 of the IPC by killing the deceased in a broad day light. He has also further contended that all these three eyewitnesses i.e. PWs 2, 3 and 5 in narrating the episode of quarrel in between the two groups categorically contended that all the three Appellants, "A-1", "A-2" and "A-3" in furtherance of their common intention had committed the offence, resulting in the killing of the deceased. It is further stated by him that the evidence of these witnesses disclosed clearly that two factors required for application of Section 34 of the IPC, i.e. common intention and participation of the accused in commission of the offence were very much present in the correct hand. That being done so; according to him, this impugned judgment and order, which appears to be a well-reasoned judgment, deserves no interference by this Court.

9. Adequate consideration to the extensive submissions made by the learned Counsels for the parties has been given. We have also meticulously evaluated and carefully scrutinized the entire evidence on record, more particularly, the testimony of witnesses, namely, PWs 2, 3 and 5 so projected by the prosecution, as eye-witnesses.

10. It is found from the close perusal of the evidence of those witnesses that it was Appellant "A-1", Shri Niranjan Mali @ Niren Das, who had hit the deceased on his head by wooden batten, which was seized by the Investigating Officer (PW 8) as Ext. No. 4. It also has come in the evidence on record that there was a quarrel erupted in between the parties including the accused Appellants as well as the deceased's group as regard the cutting of a path in their field of cultivation and there was an altercation between the parties in that regard.

Eventually, the Appellant "A-1", Shri Niren Das struck a blow, as it appeared, due to sudden provocation on the head of the deceased. Nowhere in the evidence, it was stated that the deceased was attacked by the Appellants with deadly weapons like dao and lathi etc. The statement of striking a single fatal blow on the deceased as evident from the evidence of other witnesses also got due corroboration from the medical evidence of Dr. (PW 11), who found the following injuries of the deceased.

(1) One stitch wound present on the scalp over the vault, size-5 cm long, oblique, closed by 5 Nos. of stitches. Contusion and hemorrhage present on scalp around the stitch wound size-10 cm x 8 cm x scalp deep depressed communicated fracture present on vault of the skull underneath the stitch wound, size-4 cm x 3 cm x skull cavity deep. On opening the skull bones, extradural haematoma present over the both temporal lobes and parietal lobes of the brain. Brain lacerated underneath the fracture injury, size-4 cm x 1 cm intracerebrable hemorrhage present all over the brain.

The doctor in his opinion also stated that the death was due to resulting from the head caused by blunt weapon, which was ante mortem and homicidal in nature.

11. In view of the above aggravating circumstances as well as mitigating circumstances of the involvement of the Appellants alongwith the group of the deceased in a land related dispute, we are of the considered view that the Appellant "A-1", Shri Niranjana Mali @ Niren Das committed culpable homicide not amounting to murder and accordingly, his conviction u/s 302 is converted to Section 304 Part-II of the IPC and accordingly we modify the sentence of imprisonment of life. At this stage, it is submitted that, Appellant "A-1" Shri Niranjana Mali has already served sentence for a period of 5 (five) years and keeping in view the facts and circumstances of the case, he may be sentenced for the period already undergone.

12. taking note of the factual situations, as already indicated above, we find sufficient force in the submission of the learned Counsel as regard the sentence of Appellant "A-1" and accordingly we sentence him for the period already undergone by him. In so far as the Appellants "A-2" and "A-3", namely, Shri Prabin Mali and Shri Babul Mali are concerned, having found no convincing and substantive evidence against them, we are of the view that they deserve acquittal. Accordingly we order that they are acquitted of the offence under Sections 302/ 34 of the IPC.

13. The Appellant No. "A-1", Shri Niranjana Mali @ Niren Das be set at liberty forthwith, if he is not required in any other case. As regards the Appellant Nos. "A-2" Shri Prabin Mali, and "A-3" Shri Babul Mali, since they are already on bail as submitted, their bail bonds shall stand discharged.

14. In the result, the appeal is partly allowed to the extent of modification of conviction and sentence, as indicated herein above.

15. Sent down the LCRs.