
(2009) 02 GAU CK 0030
In the Gauhati High Court
Case No : Criminal Appeal No. 80 of 2007

Shri Thanuram Hazarika

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 1 GLD 816 : (2009) 2 GLT 690

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

Bench : Division Bench

Advocate : Sk. N. Mohammad, M. Rahman, Mizanur Rahman and M. Ahmad, for the Appellant; K.C. Mahanta, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

C.R. Sarma, J.—This appeal is directed against the judgment and order dated 31.3.2007 passed by the learned Sessions Judge, Jorhat in Sessions Case No. 98 (J-J)/2002 convicting the accused-Appellant for the offence u/s 302 of the Indian Penal Code and thereby sentencing him to suffer Life Imprisonment and to pay a fine of Rs. 5,000/-, in default to suffer Rigorous Imprisonment for 6 (six) months.

2 The prosecution case, as unfolded during the trial, is that on the night of 11.2.1999 at about 9. p.m. Sri Raju Hazarika was found lying dead in a pool of blood in a field at a little distance from the PWD road at village Jokaichook under Titabor Police Station in the district of Jorhat. Sri Bijit Hazarika, younger brother of the deceased, lodged an FIR on 12.2.1999 informing the police that the accused Thanuram Hazarika on 11.2.1999 at about 6 a.m. met the elder brother of the deceased and had asked him to go to the informant's house at about 4/5 p.m. on the same day but as Raju Hazarika did not visit the house of the accused, he again came to the informant's house at about 4.30 p.m. and threatened the informant. In the FIR, it was alleged that at about 8 p.m. Thanuram Hazarika killed his brother.

3. On receipt of the FIR, police registered a case and launched investigation. During the investigation, police visited the place of occurrence, prepared a sketch map and the inquest report, recovered a piece of hawai sandal, one "Alwyan" brand automatic wrist watch, one packet of Wills filter cigarette from the place of occurrence. The dead body of the deceased was forwarded for post-mortem examination and at the close of investigation, police submitted charge-sheet against the accused-Appellant for the offence u/s 302 of the Indian Penal Code.

4. This being a case, exclusively triable by the Court of Session, the learned Sessions Judge framed charge u/s 302 of the Indian Penal Code (hereinafter called the IPC) to which the accused pleaded not guilty.

5. The prosecution examined as many as 12 (twelve) witnesses in support of the prosecution case. During the trial, the accused was examined u/s 313 Code of Criminal Procedure (hereinafter referred to as the Cr PC). He denied the allegation and adduced one defence evidence. Five more witnesses were examined as Court witnesses. On the basis of the evidence on record, the learned Sessions Judge convicted the accused u/s 302 of IPC and sentenced him to suffer Rigorous Imprisonment for life and to pay a fine of Rs. 5,000/-, in default to undergo R.I. for 6 (six) months. Being aggrieved by the aforesaid impugned judgment and order, the accused-Appellant has approached this Court by filing the present appeal.

6. Heard Mr. S.K.N. Mohammad, learned Counsel appearing for the accused-Appellant and Mr. K.C. Mahanta, learned Public Prosecutor, Assam for the Respondent.

7. Learned Counsel for the accused-Appellant, taking us through the evidence on record, submitted that there was no direct evidence against the accused-Appellant and that the circumstantial evidence revealed by the evidence of the witnesses failed to conclusively indicate that none other than the accused person had committed the alleged crime. He further submitted that the learned Sessions Judge committed illegality by convicting the accused without sufficient, cogent and reliable evidence. In reply, the learned Public Prosecutor contended that, though there was no eye-witness to the occurrence, the circumstantial evidence revealed by the witnesses was sufficient to hold that the accused person had committed the offence and that the learned Sessions Judge had rightly passed the order of conviction and sentence.

In order to appreciate the evidence on record, we feel it appropriate to have a brief resume of the evidence on record.

8. PW 1 Shri Bijit Hazarika was the younger brother of Raju Hazarika (deceased). He lodged the FIR (Ext. 1) with the police. In his evidence given on oath, he stated that on the fateful evening at about 8 p.m., some boys from the village came to his house and informed that Raju Hazarika was found dead in the field near their house. Immediately thereafter, this witness rushed to the place of occurrence which was situated by the side of the PWD road near the house of

Arun Hazarika (PW 7) and Smti. Kanchan Hazarika (PW 3) and saw the dead body of Raju Hazarika. According to this witness, one Bui Hazarika and Bitupon Hazarika also arrived at the place of occurrence.

9. PW 2 Shri Kanram Saikia stated that having heard hue and cry, he rushed to the place of occurrence and found the dead body of the deceased in the field near the PWD road.

10. PW 3 Smti. Kanchan Hazarika, daughter of Shri Arun Hazarika (PW 7) stated that the accused was her paternal uncle and the deceased was her related uncle. According to this witness, at about 8 p.m. in the night of occurrence, when she went out of her residence to attend nature's call, she saw the accused in their gateway with a blood stained khurki, in his hand. She further stated that she saw blood in the accused's hands, which were kept behind his back. She stated that, she immediately informed her mother about the matter, who replied that the accused might have murdered some person. According to this witness she informed Shri Bitupon and Rinki also, who arrived at her house to take her for the rehearsal of a drama, but she did not go for rehearsal on that night. She further stated that she informed about the incident to Shri Nripen Hazarika alias Subha Hazarika (PW 4). Again, in her cross-examination, the PW 3 stated that she saw the accused in their courtyard. Certainly courtyard cannot be gateway, for she used the said two terms at different stages of her examination. The prosecution failed to clarify this contradiction. Therefore, it is doubtful whether the PW 3 had seen the accused in her courtyard or gateway. This witness further stated that in the afternoon i.e., prior to the incident, the accused went to their house to enquire if Subha Hazarika (PW 4) and the deceased were there. This cannot be conclusive evidence to hold the accused guilty in this case. Further, from the evidence of this witness, it appears that on the fateful evening at about 8 p.m. she saw the accused in their gateway/courtyard and the accused was armed with a blood stained khurki; while his hands were stained with blood and, immediately thereafter, she had informed her mother, Shri Bitupon, Shri Rinki and Shri Nripen @ Subha Hazarika. Except Nripen, none of the said witnesses was examined by the prosecution. PW 1 and PW 2 did not know as to who had killed the deceased. Of course, PW 1 stated that in the morning the accused went to his house and asked him to send his brother i.e., the deceased to the house of the accused and that as the deceased did not attend the house of the accused, the accused, again in the evening, came to his house and warned that the days of his brother were numbered. The said evidence of PW 1 cannot solely be sufficient circumstances to believe that the accused had caused the death of the deceased. PW 2 did not state anything against the accused. As discussed above, PW 3 saw the deceased in front of their house with a blood stained dagger and blood in his hands. Her mother, Shri Bitupon and Shri Rinki, who were -informed immediately after seeing the accused in the said condition, were vital witnesses to corroborate her evidence in this regard, but none of the said witnesses was examined. Hence, we do not find any corroboration in support of the evidence of PW 3 to believe that she had seen the accused with a blood stained dagger in his

hands. Even if the accused was found with a blood stained dagger in front of their gate, it cannot be conclusively believed, without sufficient substantive evidence, that the accused had committed the murder. Because, from the evidence of PW 3, it appears that the dead body of the deceased was lying dead at a distance of 30/40 metres from the house of PW 3 across the PWD road. The Sketch Map prepared by the Investigating Officer, which was exhibited as Ext. 6, indicates that the house of PW 3 was situated in the western side of the PWD road and the place of occurrence was towards the eastern side of the PWD road. Hence, from the evidence of PW 3, it cannot be held that the accused, armed with blood stained weapon, was found near the deceased. Therefore, there is no evidence to believe that he had gone to the gate of the PW 3 after committing the alleged offence. To hold the accused guilty, there must be sufficient reliable evidence to establish that accused had come from the place of occurrence after committing the crime, but there is no such evidence. The evidence of PW 3 can, at best, lead to draw a presumption only. To base conviction on the basis of such presumption, sufficient corroboration should be found from reliable and cogent evidence, but we find no such corroboration in favour of the evidence of PW 3.

11. PW 4 Subha alias Nripen Hazarika stated that, on his arrival from the market at about 7/8 p.m., PW 3 informed him that the accused went to their house and inquired about their whereabouts. This witness further stated that on the same day at about 2 p.m., the accused Shri Thanu Hazarika had threatened to kill him. According to this witness, on the night of occurrence at about 8.30 p.m., he heard hue and cry and he came to know that Raju Hazarika (the deceased) was murdered at a place near his house. Thereafter, this witness went to the place of occurrence and found the dead body of Raju Hazarika with deep injury on the left side of the stomach. From the evidence of this witness, it is found that the accused had threatened to kill him and not the deceased. A careful scrutiny of the evidence of PW 3 and PW 4 indicates a major contradiction in their evidence. According to PW 3, she had informed PW 4 that she had seen the accused in their gate with a blood stained dagger in his hand. But, according to PW 4, on his arrival at his residence at about 7/8 p.m., PW 3 informed him about the enquiry made by the accused. PW 4 nowhere stated that PW 3 had told that she had seen the accused with a blood stained khurki, in his hand. In view of the above, if the evidence of PW 4 is believed, then the evidence of PW 3 that she had reported PW 4 about the presence of the accused, with a blood stained khurki, in their gate, cannot be believed. The failure on the part of PW 4 to support the evidence of PW 3 on this material point raises doubt about the veracity of the evidence of PW 3. Hence, the evidence of PW 3 lacks corroboration on this point.

12. PW 5 Shri Mridul Saikia stated that Shri Mukul Hazarika and Shri Bitupon Hazarika informed him that the deceased was murdered and that the dead body of the deceased was lying near the house of Shri Arun Hazarika (PW 7). This witness went to the place of occurrence and found the deceased drenched with blood.

13. PW 5 stated that Smt. Kanchan Hazarika i.e., PW 3 told him next day that on the fateful night at about 8 p.m., she saw the accused in front, of their house with a blood stained dagger. But PW 3 Smt. Kanchan Hazarika nowhere stated that she had informed PW 5 about the presence of the accused in front of their house on the fateful night. Therefore, it cannot be believed, for want of corroboration, that PW 3 had informed PW 5 that the accused was found in their gateway.

14. PW 6 Shri Yadab Ch. Hazarika state that hearing hue and cry, he went out and found the dead body of the deceased in the field, near the house of Shri Arun Hazarika. His evidence does not indicate that the accused had committed the alleged offence.

15. PW7 Shri Arun Hazarika, i.e., the father of PW 3, stated that on being informed by one Ganesh, he rushed to the place of occurrence and found the dead body of the deceased lying in a pool of blood. He further stated that on being asked, Smt. Kanchan Hazarika told him that at the time of occurrence, she had seen the accused armed with a dagger like weapon. The evidence of Smt. Kanchan Hazarika does not indicate that she told PW 7 that she had seen the accused armed with a dagger like weapon. According to PW 3 she saw a khukri, and not a dagger like weapon. Hence, it is not believable that she would have told her father (PW 7) about a dagger like weapon. In view of the above discrepancies, it is not believable that PW 3 had told PW 7 that she saw the accused with a dagger like weapon. A close scrutiny of the evidence of PW 7 indicates that, before his arrival, many people had gathered in the place of occurrence and PW 3 had disclosed that she had seen the accused with a dagger like weapon in presence of PW 7 and others. But none of said persons was examined to corroborate the evidence of PW 7. From the evidence of PW 3, it is clearly found that she had informed her mother, Sri Bitupon Hazarika, Sri Rinki Hazarika and Sri Subha Hazarika @ Nripen Hazarika PW 4, about the presence of the accused in their gateway. Hence, the evidence of PW 7 that the PW 3 informed him about the presence of the accused in their gateway lacks corroboration, Sri Utpal Hazarika, PW 8 rushed to the place of occurrence and found the dead body in a pool of blood. His evidence does not indicate that the accused had committed the offence.

16. PW 9 Shri Soneswar Hazarika went to the place of occurrence in the next morning after arrival of the police and found the dead body.

17. PW 10, a medical officer, who conducted the post-mortem examination of the deceased found the following injuries:

Thorax-A rent of 1" x 1/2" was present on the left chest wall in the 4th intercostal space corresponding to the injuries described in the external injury.

Plurae-Incised at the level of 4th intercostal space corresponding to the injury described in the injury described in external appearance.

Haemotherapy present in left side.

Larynx and trachea are found healthy. Right lung healthy. Left lung lacerated in anterior aspect. Haemopericardium present.

Heart-Both chambers are found empty. Incised wound over the left ventricle, measuring 1" x 1/4".

Vessels-healthy. Mouth, pharynx, esophagus are all healthy.

Stomach and its contents-Healthy with partly digested food only. Small intestines and its contents are healthy and containing semi-digested food. Large intestines and its contents-liquid fecal matter and gases and otherwise healthy.

Muscles, bones and joints-Injury of the muscle underlying injury is 1" x 1/2".

These injuries described were ante-mortem in nature.

Opinion : In my opinion, the cause of death was due to syncope as a result of injuries sustained by the deceased. The weapon used might be sharp edged one.

18. From the evidence of PW 10, it is found that the death of the deceased was caused due to the injuries caused with a sharp edged weapon.

19. PW 8 was the investigating officer. On receipt of the FIR, he prepared the inquest report and seizure list.

20. CW 8, a police officer, submitted the charge-sheet CW 1 Md Khairul Islam, a police officer, conducted the investigation. CW 2 Sri Bijoy Saikia stated that he heard that the accused had killed Sri Raju Hazarika. He had exhibited the seizure list and his signature thereon. He did not state about the source from which he came to know that the accused had committed the offence. CW 3 Sri Parag Hazarika stated that he had heard that the accused had committed the murder. He also exhibited the seizure list and his signature thereon. CW 4 Mukul Hazarika stated that he heard that the deceased was killed by the accused and that the police recovered some articles from behind the house. He did not state as to whom those articles belonged. CW 5, Sri A.F.A. Bora, a Judicial Officer, who recorded the statement of Smti Kanchan Hazarika PW 3 u/s 164 Code of Criminal Procedure exhibited the same as Ext. 3. One Indira Bahadur Gurung was examined as a defence witness (DW1). Exhibiting a document, issued by Major Vikram Singh, as Ext. Kha and the signature of Major Vikram Singh as Ext. Kha(1) he tried to show that on 11.2.1999 the accused Thanu Hazarika was at Mokokchang. In this cross-examination, this witness, who was serving in Assam Rifles, stated that from 1986 to 1997, he served at Mokokchang and that the accused worked there as driver. In his statement u/s 313, Code of Criminal Procedure, the accused took the plea that as he was working in Assam Rifles on the date of occurrence, he was performing his duty at Mokokchang. In his cross-examination, the DW 1 stated that Major Vikram Singh did not work at Mokokchang on 11.2.1999. Again, he stated that he did not know whether the accused was present at the place of work or in Assam on 11.2.1999. In view of

the above, as Maj. Vikram Singh was not working at Mokokchang on 11.2.1999, we find no substance in Ext. Ka and Ext. Kha to believe that the accused was performing duty at Mokokchang on the fateful evening. As per Ext. 7, it appears that Maj. Vikram Singh, Adjutant was not physically posted at the unit where the accused used to serve on 11.2.1999. Therefore, it is doubt whether the accused was performing duty at Mokokchang at the relevant time.

21. From record, not an iota of direct evidence is found to believe that the accused had committed the alleged offence. Learned PP supporting the impugned judgment and order of the learned Sessions Judge, submitted that the circumstantial events indicated that the accused committed the offence. The principle for basing a conviction on the basis of the circumstantial evidence has been well settled in a catena of decisions. The Hon"ble Apex Court in case of Ram Singh Vs. Sonia and Others, held as follows:

39. The principle for basing a conviction on the basis of circumstantial evidence has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of grievance have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond of all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof, for some times unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court, that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions.

22. Keeping in mind the well settled principle and law regarding appreciating the circumstantial evidence it is to be considered if the accused can be held guilty in this case. In the present case the following circumstances have emerged from the evidence of the PWs: (1) The accused had directed the deceased to go to the accused-house, (2) that the accused had again visited the house of PW 2 in the afternoon and threatened that the days of the deceased were numbered, (3) that the accused was seen by PW 3 in their gateway with a blood stained khurki, and blood soaked hands, (4) that the death of deceased was caused due to grievous injury caused with a sharp weapon, (5) that the dead body of the deceased was found lying in a pool of blood in the field near the house of PW 3, (6) the place of

occurrence was at a distance of about 30/40 metres from the house of PW 3 i.e., the place where PW 3 had seen the accused.

As discussed above, we find sufficient contradiction in the evidence of PW 3 and, as such, her evidence that she saw the accused in her gateway cannot be believed without corroboration. None of the witnesses corroborated the said statement of PW 3. Therefore, it is not safe to rely on the evidence of PW 3 to hold that the accused was found in the gate of PW 3 with a blood stained dagger. There is no evidence to find that the accused had arrived at the gateway of PW 3 after committing the crime. Hence no link could be established between the presence of the accused in the gateway of PW 3 and the killing of the deceased. Hence the chain of circumstantial evidence is not complete to hold that the accused had killed the deceased. Thus the prosecution failed to establish a complete chain of events indicating that the accused had come to the gate of the PW 3 after committing the crime.

In a case resting on circumstantial evidence, the circumstances surfacing from the evidence on record must form a complete chain of events exclusively pointing to the guilt of the accused, without creating any doubt about his innocence. Failure of the prosecution to fill up the gap in chain of circumstances is fatal for the prosecution. In the event of any doubt leading to the probability of two hypotheses, one going in favour of the accused indicating his innocence and the other against him, the benefit should go in favour of the accused. Therefore, the evidence on record must lead to presume, without any second probability, that none other than accused had committed the crime; and the prosecution case is to be examined in its entirety having regard to the totality of the circumstances.

In view of the existing evidence aforesaid, even if it is believed that the accused was found with a blood stained dagger in the gate of the PW 3 i.e., at a distance of 30/40 mtrs from the place of occurrence, it will not be sufficient to form an irresistible conclusion that none other than the accused had committed the offence. None of the witnesses saw the accused either following the deceased or coming from the place, where the dead body was lying. If PW 3 had seen the accused in front of their gate with a blood stained weapon and if she had disclosed the same, as claimed by her, to her mother, Shri Bitupon Hazarika, Shri Rinki Hazarika and Shri Subha Hazarika, then all the said persons being the material witnesses should have been examined in support of her statement. Non-examination of such vital witnesses except Shri Subha Hazarika raises doubt about prosecution story. Though Shri Subha Hazarika (PW 4), was examined he did not state that PW 3 had told him that she had seen the accused in their gate. In view of the above, we do not find sufficient corroboration to believe that PW 3 had seen the accused in their gate. Hence, the evidence by the prosecution witnesses, does not indicate reasonable ground for a conclusion consistent with the guilt of the accused. The evidence on record does not show that within all human probabilities, the act was done by none other than the accused. In the

light of the above discussion we are of the considered view that the circumstances relied upon by the prosecution is not sufficient to safely hold, to the exclusion of others, that the accused had committed the offence. In view of the above, we find that the learned Sessions Judge failed to appreciate the evidence on record in its true perspective. In the light of the above, we find sufficient merit in this case to interfere with the impugned judgment and order, and we do so.

23. In the result, we allow this appeal and set aside the impugned judgment and order dated 31.3.2007 passed by the learned Sessions Judge, Jorhat in Sessions Case No. 98(J-J)/2002. The accused-Appellant be set at liberty forthwith if not required in any other case.

24. Send back the case records.