

(2021) 04 GAU CK 0015
In the Gauhati High Court
Case No : Criminal Appeal (J) No. 131 Of 2015

Shyam Rajak

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 20-04-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 326, 488
Code Of Criminal Procedure, 1973 — Section 161, 164, 313

Citation : (2021) 04 GAU CK 0015

Hon'ble Judges : Manash Ranjan Pathak, J; Mir Alfaz Ali, J

Bench : Division Bench

Advocate : R M Choudhury, M Chiringr

Final Decision : Dismissed

Judgement

M.R. Pathak, J

1) Heard Mr. Ramani Mohan Choudhury, learned Amicus Curiae for the accused appellant and Ms. Barnali Bhuyan, learned Additional Public Prosecutor, Assam for the respondent No. 1. Also heard Mr. Monoranjan Chiring, learned counsel for the respondent No.2/informant.

2) Learned Additional Sessions Judge, Sonitpur, Tezpur by judgment and order dated 16.11.2015 passed in Sessions Case No. 41/2009, [arising out of Rangapara Police Station Case No. 92/2008, corresponding to G.R.No. 1813/2008] convicted the accused appellant Shyam Rajak under Section 302 IPC and sentenced him with Rigorous Imprisonment for life with fine of Rs. 10,000/- and in default of payment of fine, to undergo rigorous imprisonment for further period of 2 (two) years.

3) Being aggrieved with the said conviction and sentence dated 16.11.2015; said accused Shyam Rajak has preferred this appeal from jail.

4) The informant Smti Binati Saotal (PW.3) on 18.10.2008 lodged an written ejahar

before the Officer-in-Charge of Rangapara Police Station stating that in the morning on the said date, around 05:00 am, two accused persons, namely, UmeshGogoi, (22 years) and ShyamRajak (38 years) of Line No.1 of Balipara Branch Tea Estate, armed with dao and iron rod came to their house, hacked her elder brother GhasiSaotal, sister-in-law KiranSaotal and her second nephew BilluSaotal with dao and also assaulted them with iron rod, suspecting them of practicing witchcraft. Due to such assault, her sister-in-law and nephew died on the spot and that her brother, being in a critical condition, was taken to Phoolbari Central Hospital. Accordingly, the case was set into motion by registering the said FIR dated 18.10.2008 as Rangapara Police Station Case No. 192/2008 under Section 488/326/302/34 IPC (Exhibit-4).

5) Prior to the lodging of the said FIR before the Rangapara Police Station; the Assistant Manager and Welfare Officer of Adabari Tea Estate, Balipara Branch on 18.10.2008 around 06:30 am over phone informed the Chariduar Police Station that 2 (two) persons of the said Tea Estate were killed and that the accused persons were apprehended by the villagers who were kept in the house of Gaoburha (village head man) of BurhaGaon. The said information was registered as Chariduar Out-Post G.D. Entry No. 359 dated 18.10.2008 (Exhibit-8). On receiving the said information, police personnel from the Rangapara Police Station visited the place of occurrence, drawn the Sketch Map (Exhibit-13), seized one dagger fitted with wooden handle which was about 1½ feet length and 4½ feet length iron rod, in presence of witnesses by preparing a Seizure Memo (Exhibit-1), conducted the inquest on the person of the deceased GhasiSaotal and KironSaotal in presence of witnesses preparing Inquest Reports (Exhibits-6 & 7 respectively), sent both the dead bodies to the Kanaklata Civil Hospital, Tezpur for their post-mortem examination by preparing necessary challans (Exhibits -10 & 11 respectively), arrested both the accused persons, who were apprehended by the local people, recorded the statements of the witnesses acquainted with the facts, then proceeded to Phoolbari Central Hospital to see the other injured person. Reaching there and on being informed that the injured was taken to Kanaklata Civil Hospital, Tezpur, police personnel reached the said hospital at Tezpur, wherein they were informed that the other victim GhasiSaotal was brought dead, who succumbed to his injuries. Police personnel of Tezpur Police Station conducted the inquest on the person of the deceased GhasiSaotal at Kanaklata Civil Hospital, Tezpur in presence of witnesses, prepared the Inquest Report (Exhibit-9) and then sent the dead body of said GhasiSaotal to the authorities of said Kanaklata Civil Hospital for its post-mortem examination by preparing necessary challan (Exhibit-12).

6) During investigation of the case, the learned Judicial Magistrate 1st Class Sonitpur, Tezpur on 28.10.2008 recorded statements of two witnesses, namely, BinatiSaotal (PW.3/Informant) and DipakSaotal (PW.4) under Section 164 Cr.P.C. (Exhibit-5 is the statement of DipakSaotal).

7) After collecting the post-mortem reports of all the three deceased persons

namely, BilluSaotal, GhasiSaotal and KiranSaotal (Exhibits-2, 3 & 4 respectively) and on completion of the investigation of the case, the concerned Investigating Officer submitted the Charge-Sheet in said Rangapara PS Case No. 92/2008 vide No. 592/2008 dated 30.11.2008 under Sections 448/302/34 IPC (Exhibit-15) against the accused appellant ShyamRajak and the other accused UmeshGogoi finding sufficient prima facie materials against them regarding their involvement of in the case.

8) The learned Sessions Judge, Sonitpur, Tezpur by order dated 17.01.2009 passed in MiscCrl. Case No. 22/2009 declared the accused UmeshGogoi to be a juvenile in conflict with law and accordingly the Chief Judicial Magistrate, Sonitpur, Tezpur on 05.02.2009 forwarded the supplementary case records of said G.R. Case No. 1813/2008 pertaining to the accused UmeshGogoi to the Principal Magistrate, Juvenile Justice Board, Sonitpur, Tezpur.

9) As Section 302 IPC being exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate, Sonitpur, Tezpur by order dated 18.02.2009 committed the said G.R. No. 1813/2008 to the Court of learned Sessions Judge, Sonitpur, Tezpur wherein it was re-registered as Sessions Case No. 41/2009. Learned Sessions Judge, Sonitpur Tezpur by order dated 26.02.2009 transferred the said Sessions Case No. 41/2009 to the Court of learned Additional Sessions Judge, Fast Track Court, Sonitpur, Tezpur for its disposal. Learned Additional Sessions Judge, FTC, Sonitpur, Tezpur on 05.03.2009 framed charge under section 302 IPC against the accused appellant which was read over and explained to him, to which the said accused pleaded not guilty and claimed to be tried. Accordingly, the trial of the case began.

10) To prove the guilt of the accused, the prosecution adduced evidence of 7 (seven) witnesses and exhibited the relevant documents noted above. Though the defence did not adduce any evidence, but cross-examined the prosecution witnesses. After completion of recording of evidence of the prosecution witnesses, the learned trial judge on 09.10.2015 recorded the statement of the accused under Section 313 Cr.P.C. in which he denied all the accusations made against him by the prosecution and also refused to adduce any evidence from his side.

11) PW.2 Dr. Hiranjan Saikia was the autopsy doctor who conducted the post-mortem examinations of all the three deceased persons involved in the case. In his examination-in-chief, said autopsy doctor deposed that BilluSaotal @ Bhisma, a male of 10 years old was found with cut injury in his occipital scalp, incised cut injuries extending from nape of neck to left ear root in occipital scalp and his skull bone was found with fracture. His Membrane of brain was found to be lacerated and the said doctor excepting the above did not find any other injuries on the person of said deceased. PW.2 opined that the death of said child, BilluSaotal was due to head injury sustained by him, which were anti-mortem in nature.

Said PW.2 also stated that the deceased KiranSaotal, a female of 30 years old was found with cut injury in the nape of her neck, incised cut injuries extending from nape of neck posteriorly extending up to cervical spine and spinal cord extending to both, left side of neck and also found cut injury on her spinal cord with fracture on it. Excepting those, said doctor found the other organs of the deceased KiranSaotal to be healthy. PW.2 opined that the death of said KiranSaotal was due to cervical injury sustained by her, which were anti-mortem in nature.

PW.2 in his evidence further deposed that GhasiSaotal, a male of 53 years old was found with repaired wound in scalp, incised wound on his left side of temporo-occipital scalp of 6 cm × 2 cm × 1 cm size, two in numbers; found his skull bone fractured where his membrane and brain were found lacerated. The said autopsy doctor opined that the cause of death of said GhasiSaotal was due to head injuries sustained by him, which were anti-mortem in nature.

12) Leading the evidence of said autopsy doctor PW.2, the prosecution proved that the death of all the three deceased were anti-mortem in nature.

13) PW.1, Lachu Prasad Chetri and PW.5, Pori Gogoi were seizure witnesses and they were declared hostile by the prosecution.

14) PW.3, BinitaSaotal, the informant of the case in her examination-in-chief deposed that she resides with her elder brother GhasiSaotal and that the incident occurred in the early morning. She deposed that while she was lying on the bed with Ghasi's son and daughter Dipak and Marami on the date of the incident, she heard that both the accused persons of the case were threatening the deceased that they would hack him (her elder brother) and his family members and on hearing the same, she came out of her bedroom. At that point of time when BilluSaotal went out to attend nature's call, accused UmeshGogoi gave a dao blow on him and also gave dao blow on KiranSaotal and that the accused ShyamRajak assaulted her brother GhasiSaotal by an iron rod on his person. She also deposed that his nephew BilluSaotal and sister-in-law KiranSaotal died on the spot and her injured brother GhasiSaotal was taken to Phoolbari Tea Garden Hospital by the Manager of Bilasipara Tea Estate, where he succumbed to his injuries.

In her cross-examination by the defence, she stated that the villagers suspected them to be wizards (witch/Daini) and denied the suggestions that both the accused persons of the case were not armed with dao and iron rod. However, in her cross-examination she stated that the FIR was prepared by the police wherein she had put her thumb impression and the contents of the FIR were not read over to her. Said PW.3 denied the suggestions that she had deposed falsely and also denied that the accused persons did not commit the offence as she had deposed. In her cross-examination she further stated that the occurrence took place in the winter season when it was almost dark and that police did not recover any dao and iron from the place of occurrence.

15) PW.4 DipakSaotal, son of the deceased GhasiSaotal in his evidence-in-chief deposed that the incident occurred in the early morning around 40:00/04:30 am and that it was the accused persons ShyamRajak and Umesh Gogoi who caused the injuries on the person of the deceased persons involved in the incident. He deposed that when both the accused persons were making halla (uproar), his mother woke him stating that halla has been raised outside his house and then he and his brother BilluSaotal woke up and when his brother Billu went out to urinate, accused UmeshGogoi hacked him due to which his said brother fell down on the verandah of their house. Seeing the same when the said PW.4 cried out, at that time his father GhasiSaotal intended to come out but he could not and that he dragged his brother BilluSaotal inside the house. He also deposed that when his mother KiranSaotal woke up, she went near the well and then UmeshGogoi hacked her and seeing it when his father came out of the house, accused ShyamRajak dealt blow on his head with rod and also inserted the same in his body. He further deposed that both his mother and brother died on the spot and his father was taken to the hospital by the Manager of the Tea Estate, where he succumbed to his injuries. PW.4 deposed that his statement was recorded by the Magistrate, Exhibit-5, which he proved identifying his signatures on it.

During his cross-examination, PW.4 deposed that his neighbours came to the place of occurrence after a while of the incident and during the time of lifting of the dead bodies. He reiterated the incident as narrated in his examination-in-chief and denied the suggestions that as it was dark he could not recognise the accused persons. PW.4 in his cross-examination also stated that the villagers called his parents as witches and that about a week prior to the said incident, the members of two families of their village attacked their house and family, suspecting them to be witches.

16) PW.6, Hindu Munda, was a witness to the inquests made on persons of the deceased BilluSaotal and KiranSaotal and signatory to their Inquest Reports, Exhibits - 6 and 7 and said PW.6 identified his signatures on those reports. He deposed that on the date of the incident on reaching the house of Ghasi, he saw dead bodies of Kiran and Billu and Ghasi was taken to Hospital where he died.

During his cross examination by the defence, PW.6 stated that while taking his signatures on the Exhibits - 6 and 7, it was not read over to him and that the informant Binita did not tell him the names of the accused persons.

17) PW-7, ZiaurRahman Khan, Investigating Officer of the case, was the in-charge of Chariduar Police Station at the relevant time and he in his evidence-in-chief deposed that on the date of the incident on 18.10.2008, he received information over phone from the Manager of Adabari Tea Estate that two persons have been killed in Line No.1 of said tea garden and that the assailants were apprehended by the villagers and handed over to the Gaonburah and that those accused persons were kept in the house of said Gaonburah. PW-7 stated that getting such information, he accordingly made Chariduar Police Station G.D.Entry No. 359 dated 18.10.2008, Exhibit-8 and went to the place of occurrence along

with his staff and police personnel. Said PW.7 also deposed that at the place of occurrence the accused persons confessed before him and other villagers and also stated that the villagers suspected the family of the deceased GhasiSaotalof practicing witchcraft.

He deposed that PW.1, Lachu Prasad Chetri (hostile witness) during investigation in his statement under Section 161 Cr.P.C. stated before him that on 18.10.2008 UmeshGogoi and his maternal uncle ShyamRajak (the appellant herein) assaulted KironSaotal, BilluSaotal and GhasiSaotal with sharp weapon resulting their death and that GhasiSaotal who sustained grievous injury was taken to Phoolbari Central Hospital. Said PW.1 also stated that about an year back UmeshGogoi and PromodGogoi's father Chandra Gogoi died due to illness and that UmeshGogoi and his father suspected GhasiSaotal's wife KironSaotal to be aDaini (witch) and that UmeshGogoi suspected GhasiSaotal's wife KironSaotalaccountable for the death of his father Chandra Gogoi. Said PW.7 exhibited statements of said Lachu Prasad Chetrimade under Section 161 CrPC as Exhibit-16.

PW.7 also deposed that PW.5, Pori Gogoi (hostile witness) during investigation in her statement under Section 161 CrPC stated before him that on 18.10.2008 UmeshGogoi and his maternal uncle ShaymaRajak suspecting Kironand Billu to be Daini (witch) and that they were practicing witchcraft, as such assaulted them with sharp cutting weapon, due to which Kiron and Billu died on the spot. Said PW.7 also stated that saidUmesh confessed his guilt before him and others. PW.7 also stated that PW.5 told him that Ghasi,who sustained grievous injury, was taken to Phoolbari Hospital for treatment and that police seized weapon of offence preparing seizure list, in which he was a signatory. Said PW.7 exhibited the statement of said Pori Gogoi made under Section 161 CrPC as Exhibit-17.

In his cross-examination PW.7 stated that the Material Exhibits -1 and 2, the dagger and the iron rod were given to police by the accused UmeshGogoi and that he recorded the statement of the witnesses on the date of occurrence itself around 09:00 am. He also stated that a written ejahar was received on the date of the incident around 11:30 am after recording the statement of witnesses.Said PW.7 akso stated that the Officer-in-Charge of RangaparaPolice Station entrusted the case to him around 12:30 pm on the date of occurrence itself so as to investigate the same. Said PW.7 denied the suggestion that the investigation was not done as per proper procedure.

18) From the perusal of the Exhibit-5, statement madeby PW.4 DipakSaotalunder Section 164 CrPC before the JMFC,Tezpur on 23.10.2008, it is seen that said PW.4 clearly stated before the Magistrate that when his brother woke up he went outside for urination and at that time accused UmeshGogoi hacked him and that when his mother was returning from the wale, UmeshGogoi hacked her too by dao. PW.4 further stated before the Magistrate that when his father went out, ShyamRajak, the accused assaulted his father by rod on his head and also stabbed him in his stomach and that he witnessed the entire incident.

19) It is seen that the evidence of the PW.4 DipakSaotal made before the Trial Judge is corroborated by his statement under Section 164 CrPC made before the Magistrate, Exhibit-5. The defence failed to thwart the said evidence of PW.4 regarding the commission of offence by the accused appellant. It is also clear in evidence that both the accused persons arrived in the house of the deceased GhasiSaotal in the early morning on the date of the incident and threatened to kill him and his family. It disclosed the motive of the accused persons to commit the crime. On scrutinizing the evidence led by the prosecution, including the Exhibit-5, together with the post-mortem reports of the deceased persons BilluSaotal, son of GhasiSaotal, KironSaotal, wife of GhasiSaotal and that of GhasiSaotal; Exhibits - 2, 3 and 4 respectively, the motive and the act of the accused appellant is found to be proved.

20) Going through the evidence of the prosecution witnesses and the exhibits placed before the learned Trial Judge, we do not find any illegality and infirmity with the impugned judgment of conviction and sentence dated 16.11.2015 passed against the accused appellant and we are of the view that the same does not call for any interference.

21) Accordingly, this appeal preferred by accused appellant, ShyamRajak being devoid of merit, stands dismissed.

22) We appreciate the assistance rendered by the learned Amicus Curiae Mr. R.M. Choudhury as well as the learned Additional Public Prosecutor, Ms. B Bhuyan. On raising a bill, the Gauhati High Court Legal Services Authority, Guwahati shall pay an amount of Rs. 7,500/- to Mr. R.M. Choudhury, learned Amicus Curiae towards his professional fee.

23) Registry shall return the LCR to the Court of learned Additional Sessions Judge, Sonitpur, Tezpur along with a copy of this judgment. Registry shall also forward a copy of this judgment to the Superintendent of Central Jail, Sonitpur, Tezpur so as to furnish the same to the accused appellant, ShyamRajak.