

(2019) 12 GAU CK 0011
In the Gauhati High Court
Case No : Criminal Appeal No. 178 Of 2017

Sombaru Narzary

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 143, 201, 302

Citation : (2019) 12 GAU CK 0011

Hon'ble Judges : Mir Alfaz Ali, J;S. Hukato Swu, J

Bench : Division Bench

Advocate : S.M B Baruah

Final Decision : Allowed

Judgement

M.A. Ali, J

1. Heard Ms. M.B.Barauh, learned Legal Aid Counsel for the appellant and Mr. M. Phukan, learned Addl. Public Prosecutor for the State respondent No. 1.

2. This appeal is directed against the judgment and order passed by the learned Sessions Judge, Chirang, in Sessions Case No. 128(D)/2015. By the said judgment, the learned Sessions Judge convicted the present appellant along with other co-accused u/s under Sections 302/201 IPC and sentenced them to imprisonment for life under Section 302 IPC and rigorous imprisonment for two years under Section 201 IPC. They were also sentenced to fine of Rs. 3,000/- each & Rs.1,000/- each u/s 302 and 201 IPC respectively with default stipulation.

3. As per the prosecution case, on 06.11.2011, eight accused persons named in the FIR forcibly took away the mother and father of the informant, namely, Smt. Bulao Narzary and Raman Narzary respectively. Later on, they were killed by the said accused persons and buried the bodies in the cremation ground. An FIR was lodged by PW-1, Amar Narzary, on the basis of which, police registered Dhaligaon P.S. Case No. 141/2011 under Sections 143/302/201 IPC and commenced investigation. In course of investigation, the police recovered the

bodies of the victims, prepared the inquest report, conducted postmortem examination, recorded the statement of the witnesses and on completion of investigation, laid charge sheet against the eight accused persons, including the present appellants. Out of the eight accused persons named in the charge sheet, one Gauri Boro was declared absconder, as his attendance could not be procured and eventually the present appellant along with other co-accused stood trial.

4. In course of trial, learned Sessions Judge framed charges against all the accused persons including the present appellant under Section 302/201 IPC, to which, they pleaded not guilty. In order to prove the charges, prosecution examined 14 witnesses and on appreciation of the evidence, learned Sessions Judge, convicted all the accused persons standing trial including the present appellant under Section 302/201 IPC and awarded sentence as indicated above.

5. There were three other appeals filed by the co-accused, which were already heard and disposed of by this Court by a common judgment delivered on 05-11-2019, whereby, the appeals were allowed and the conviction and sentence of the appellants therein were set aside.

6. The learned Sessions Judge convicted all the accused persons including the present appellant relying on the circumstantial evidence, as there was no direct evidence to the occurrence of causing death of the deceased. While deciding the appeals filed by the other co-accused against the same judgment, a coordinate Bench of which one of us (self) was a member, came to the finding after having marshaled the evidence, that the chain of circumstances was not proved beyond reasonable doubt, so as to lead to an irresistible conclusion that the persons were the perpetrator of the offence. Learned trial court recorded conviction of all the accused persons including the present appellant on the basis of same set of circumstantial evidence. However, this Court held in the earlier judgment dated 05.11.2019 that chain of circumstances was not complete and therefore, conviction and sentence of the appellants in the earlier appeals were set aside. We take note of, that the present appellant stands on the same footing along with the co-accused, who were already acquitted by allowing their appeals. Since the prosecution has not been able to prove the chain of circumstances to prove the guilt of the accused beyond reasonable doubt, which resulted in the acquittal of other co-accused, we find no reason to deal with the present appellant differently.

7. In view of the discussions and the findings arrived at in the other appeals filed by the co-accused, we set aside the conviction and sentence of the present appellant and allow this appeal. We also made it clear that the judgment dated 30.05.2015 passed by the learned Sessions Judge is hereby set aside and the benefit of this judgment shall go to any other accused, if any, who, was convicted by the judgment

5. 11.2019 impugned herein. We further direct that the appellant be set at liberty forthwith, if not required in any other case.

8. Before parting, we appreciate the assistance rendered by Ms. M.B. Baruah, learned Legal Aid Counsel and hereby provide that she will be paid Rs. 7,500/- as her professional fees. Upon production of a copy of this judgment, the Gauhati High Court Legal Services Committee, Guwahati shall pay the said fee to the learned Legal Aid Counsel, Ms. M.B. Baruah.

9. Send back the record.