
(2013) 12 GAU CK 0019
In the Gauhati High Court
Case No : Crl. Appeal No. 36(J) of 2011

Sowab Ali (Md.)

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2014) 1 GLT 874

Hon'ble Judges : Sreedhar Rao, J; M.R. Pathak, J

Bench : Division Bench

Judgement

Sreedhar Rao, J.—Heard Mr. K. Goswami, learned amicus curiae and Ms. S. Jahan, learned Addl. Public Prosecutor, Assam. The material facts of the prosecution case disclose that one Abdus Subhan is the deceased. Accused also belongs to the same religion. The accused and the deceased, after offering Namaj, on 17.05.2004, were returning to their home and on the way, there was heated exchange of words between the accused and the deceased. The accused, with a lathi, assaulted the deceased and dealt one blow. The deceased became unconscious and he was taken to Karimganj Civil Hospital for treatment. From Karimganj Civil Hospital, the deceased was taken to Silchar Civil Hospital. Thereafter, the deceased was referred to a private neurological hospital at Guwahati for specialized treatment. However, the deceased succumbed to his injuries on 21.05.2004.

2. Inquest is held on the dead body and dead body is also subjected to post mortem examination. Post mortem report discloses that death is due to subdural hematoma on account of the head injury and death is homicidal.

3. P.W. 1, PW3 and PW4 are the eye witnesses to the incident. The Investigating Officer, after completion of investigation, filed the Final Report and the accused is charged for committing offence u/s 302 IPC.

4. In the evidence before the trial Court, PW3 and PW4 have supported the case and they testify to the effect that the accused and the deceased while returning

after offering Namaj, had heated exchange of words and the accused with a bamboo stick hit on the head of the deceased. The deceased fell down and became unconscious. The deceased was under treatment for a long period and, ultimately, succumbed to the injuries.

5. The trial Court, on the basis of the evidence of P.W. 1, PW3 and PW4, who are the eye witnesses to the incident coupled with the post mortem report, found the accused guilty and convicted him u/s 302 IPC. Hence, this appeal.

6. The learned amicus curiae submits the following circumstances to assail the order of conviction:

(i) The prosecution case and the contents of the FIR itself discloses that a quarrel preceded the incident of assault. It clearly suggests that in a provocative circumstance, the accused caused the injury by hitting the deceased with a bamboo stick dealing only one blow in the head. The injury, namely, subdural hematoma, is not a visible injury and it is an internal injury. It cannot be said that the accused had caused such injury intentionally, which is likely to cause death in the ordinary course.

(ii) In view of the above, it gets established that the accused had any intention of causing injury which is likely to cause death in the ordinary course, but he could be attributed with the knowledge of causing death in which event the accused can be held liable for an offence u/s 304 (Part II) IPC and his conviction u/s 302 IPC is not tenable.

7. Upon thorough consideration of the statements made at the bar and on going through the oral and documentary evidence, it becomes clear that the accused sustained head injury resulting into subdural hematoma, which is an internal and invisible injury. It is also in the evidence that in a state of quarrel, accused dealt a blow on the head of the deceased with a bamboo stick and it cannot be said that the accused had any intention of causing death. Otherwise, the accused could have dealt multiple blows. The nature of injury caused also does not suggest that the accused had an intention of causing an injury, which resulted in subdural hematoma. Therefore, in such circumstances, it can only be said that the accused had the knowledge of causing death without intention of causing death and with the intention of causing injury, which is likely to cause death in the ordinary course of nature.

8. In that view of the matter, the appeal is partly allowed and his sentence u/s 302 IPC is modified. The accused is convicted for an offence u/s 304 (Part II) IPC and sentenced to rigorous imprisonment for a period of six years. The accused is given the benefit of set off u/s 482 Cr.P.C. and, on completion of sentence imposed by this Court, he shall be released forthwith by the jail authorities.

9. The State shall pay to the learned amicus curiae a sum of Rs. 7,000/-.

10. The operative part of the order be communicated to the jail authorities and to the learned trial Court. Send back the LCR.