
(2016) 08 GAU CK 0033
In the Gauhati High Court
Case No : Criminal Appeal (J) No. 4 of 2013

Sri Basanta Boro @ Bonda Boro

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 18-08-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, Section 148, Section 149, Section 302, Section 323, Section 448

Citation : (2016) 4 NEJ 73

Hon'ble Judges : Mr. Ajit Singh, CJ. Mr. N. Chaudhury, J.

Bench : Division Bench

Advocate : Mr. K.A. Mazumdar, Additional Public Prosecutor, Assam, for the Respondent; Mr. U.J. Saikia, Amicus Curiae, for the Appellant

Final Decision : Dismissed

Judgement

N. Chaudhury, J. - Prosecution story is that one Dhireswar Das lodged an Ejahar with In-charge of Sonapur Police outpost on 19.06.2005 informing that on 18.06.2005 at about 7.30 p.m. the 6 (six) accused persons named therein dragged his father Rameswar Das and mother Kusum Das to the courtyard, beat them up and caused grievous injuries on their persons with dao and then fled from the place of occurrence. The informant was in another house at that time to collect his daily wages. Upon receipt of the Ejahar, G.D. Entry No. 612 was recorded at 3.10 p.m. on 19.06.2005 and then forwarded to Khetri Police Station for registering a case under appropriate sections in law. Sri N.C. Kalita, Assistant Sub Inspector., was entrusted with investigation. Khetri Police Station Case No. 107/2005 under sections 448/147/148/149/326 of the IPC was registered on 19.06.2005. Section 302 of the IPC was added after 3 days when injured Rameswar Das succumbed to his injuries. After completion of investigation, police submitted charge sheet. The learned Sub-Divisional Judicial Magistrate, Kamrup by order dated 03.04.2010 committed the case to Sessions. However, by the same order accused Sanjay Basumatary, Putu Boro and Bhedela Boro were sent to Juvenile Justice Board as they were found to be juveniles as on the date

of commission of offence. As accused Babul Boro had absconded, learned Sessions Judge framed charges on 17.04.2010 against accused Basanta Boro @ Bonda Boro and Pratap Basumatary @ Bihari under Sections 448/147/148/149/302 of the IPC. The appellants pleaded not guilty and claimed to be tried.

2. In course of trial, prosecution examined 6 witnesses and proved documents. Upon consideration of the evidence adduced by the prosecution, the learned Sessions Judge examined the accused persons under section 313 of the Code of Criminal Procedure. The learned Sessions Judge by judgment and order dated 11.12.2012 held both the appellants guilty under sections 147/148/323/448/302/149 of the IPC. Appellants were sentenced to suffer Rigorous Imprisonment for life under sections 302/149 of the IPC and also to pay a fine of Rs. 1,000/- each in default, Simple Imprisonment for one month. Both of them were also sentenced to undergo Rigorous Imprisonment for one month under sections 448/ 323/ 147/ 148 of the IPC each. All these sentences were directed to run concurrently. This judgment and order has been brought under challenge in the present appeal.

3. We have heard Mr. UJ Saikia, learned Amicus Curiae for the appellants and Mr. KA Mazumdar, learned Additional Public Prosecutor. We have also perused the evidence on record.

4. PW 1, Sri Hem Karmakar, is the scribe of the Ejahar. He proved Ejahar as Ext. 1. According to him, the Ejahar was written as per the version of the informant who signed on it in his presence. Ext. 1(1) is the signature of the informant, Dhireswar Das.

5. PW 2, Smt. Kusum Das, is eye witness. She was also assaulted by the accused persons along with deceased Rameswar Das. According to her, she knew the accused persons. In the evening at around 7.30 p.m. when she and her deceased husband were in the house at that time accused Babul Boro, Basanta Boro @ Bonda Boro, Putu, Bhedela, Sanjay and Pratap Basumatary @ Bihari trespassed into the house being armed with Dao, iron rod etc. and dragged both of them to the courtyard. Babul dealt a Dao blow on Rameswar Das whereas others assaulted both of them by iron rod. She came forward to save her husband but she was also badly assaulted. Babul inflicted Dao blow on her left leg. She thereafter went to the village Headman and reported the matter. The village Headman came and made arrangement for removing both of them to the hospital for medical treatment. After 3 days of occurrence, Rameswar Das succumbed to his injuries.

6. PW 3, Dhireswar Das is the informant. Having come to know about the occurrence, he came back home and found his father and mother lying down in injured condition inside the house of Gaon Bura. Accused Basanta came to the house of Gaon Bura and threatened him to cause death and also scolded his mother. There was a scuffling between Basanta Boro and himself. The Gaon Bura thereafter informed the matter to the police whereupon police came and found

the injured persons in unconscious stage. They were removed to Sonapur hospital. Two days thereafter his father died because of the injuries. His mother also sustained injury on her left leg. He proved the Ejahar as Ext. 1.

7. PW 4, Sri Nagen Chandra Kalita, is the Sub Inspector of Police. He was In-charge of Sonapur outpost on the day of occurrence. He recorded G.D. Entry No. 612 on 19.06.2005 and forwarded the same to Officer In-charge of Khetri Police Station for registering F.I.R. He held inquest over the dead body. Ext. 2 is the Inquest Report. He sent the dead body for post mortem examination. Having recorded statements of the witnesses and after receipt of the post mortem report he submitted charge sheet. On cross examination no material contradiction could be found out from him.

8. PW 5, Arunima Barua, was the Deputy Director of F.S.L. She submitted report Ext. 9 in regard to the blood stain. Her report shows that the specimen gave positive result for human blood.

9. PW 6, Dr. R. Chaliha, held post mortem over the dead body and found the following 8 injuries :-

- "1. Partially healed abrasion of size 1 x 1 cm front of left knee joint.
2. Partially healed abrasion of size 2 x 1 cm on lateral aspect of right knee joint.
3. Partially healed abrasion of size 1 x 1 cm on lateral aspect of left elbow joint.
4. Stitch wound with one stitch situated at left frontal region 5 cm above the left supra orbital arch and 6 cm left of midline.
5. Stitch wound of skull and left parietal region 6 cm in length with 4 stitches placed in a sagittal plane 4 cm left of midline.
6. Contusion of size 12 x 10 cm present on front of chest wall situated 6 cm right of midline and 6 cm below the cervical. Below this fracture of 3rd to 8th ribs present.
7. Contusion of size 6 x 5 cm present on left side of chest wall 3 cm left of midline 5 cm below the clavicle. Underneath this there is fracture of 7th to 10th rib.
8. Contusion of scalp and left side over the left frontal eminence 3 x 4 cm below this there is fracture of frontal bone which is depressed. Those were the external injuries. In the thorax injuries to the wall and ribs already described rest of the thoracic organs are pale and healthy. In the abdomen injuries to the walls already described. Peritoneal cavity contained Approx. 1? ltr. of liquid and clotted blood. Liver is lacerated. Stomach is healthy and empty rest of the abdominal organs are healthy. In the cranium and spinal canal injuries to the scalp and skull are already described. Diffused sub-dural haemorrhage present. Brain congested. Rest of the organs are healthy."

He opined that death was due to combined effect of coma and haemorrhage and

shock as a result of the injuries which are ante mortem in nature and caused by blunt force impact.

10. In course of examination under 313 of the Code of Criminal Procedure, the accused persons did not give any explanation other than denying the allegations against them.

11. It is to be seen that PW 2 was present along with deceased Rameswar Das. Rameswar was her husband. They dragged him to the courtyard and started assaulting. Being wife she went forward to save her husband. She could not save her husband and rather received cut injuries on her left leg. She was also assaulted by the accused persons. Since PW 2 herself was injured, it cannot be doubted that she was not an eye witness to the incident. She has witnessed the whole incident herself and it is she who deposed on oath that the present appellants along with others had assaulted deceased Rameswar as well as herself. Deceased Rameswar was initially treated by the doctor of Public Health Centre and was permitted to go home. But when his condition became serious, he was removed to hospital again because of the injuries and there he succumbed to his injuries after 2 days. Rameswar died because of the injuries caused in his person by the accused persons. Doctor found that except two injuries, other injuries were contusions and were the outcome of assault by blunt object. Medical evidence, therefore, is in corroboration of the ocular evidence given by PW 2. Other witnesses being neighbours, deposed to the effect that there was assault and because of the assault Rameswar died. Thus, it is clear that there was a mar-pit in the house of Rameswar where both Rameswar and his wife, PW 2 were assaulted by the accused persons. The present appellants were also the assailants. They came together being armed and assaulted the husband and the wife and then left the place together. Thus, their common intention is clear. The eye witness pointedly mentioned the names of the two appellants and thus it has been proved beyond reasonable doubt that Rameswar died because of the injuries inflicted on his person by the appellants and others. There were as many as 8 injuries on his person. The injury No. 4 and 5 are stitched wounds on left frontal region and left orbital region respectively whereas injuries No. 6, 7 and 8 are contusions caused by blunt object. Because of injuries No. 6 and 7 his ribs No. 3 to 10 were fractured. This shows the intensity of the assault done on the deceased. It is, therefore, proved beyond reasonable doubt that all the assailants had the common intention to cause death of Rameswar. Since PW 2 came forward to rescue her husband, she was also assaulted and there is injury on her left leg. The learned Sessions Judge considered both ocular as well as medical evidence and thereupon arrived at the considered opinion that the two appellants are guilty of committing offence of causing death of Rameswar Das. Having heard the learned counsel for the parties and on perusal of the evidence on record, we do not feel that a different inference is plausible on the basis of the evidence on record. The findings of the learned Sessions Judge convicting the appellants under sections 448/147/148/326/302/149 of the IPC, therefore, stand upheld and the sentences are also maintained.

12. Appeal is devoid of any merit. It is accordingly dismissed.
13. Send down the lower court records.