

(2016) 07 GAU CK 0021
In the Gauhati High Court
Case No : Criminal Appeal(J) No. 116 of 2012.

Sri Budheswar Karmakar - Appellant @HASH State of Assam

Date of Decision : 12-07-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 5 GauLJ 515 : (2016) 5 GauLR 777

Hon'ble Judges : Ajit Singh, CJ. and Suman Shyam, J.

Bench : Division Bench

Advocate : S. Borgohain, Advocate, for the Appellant; Ms. S. Jahan, APP, Assam, for the Respondents

Final Decision : Dismissed

Judgement

Suman Shyam, J.(Oral) - The appellant has challenged the judgement and order dated 20/07/2012 passed by the Court of learned Sessions Judge, Sivasagar in Sessions Case No. 71(S-S)/2009, by means of which he was convicted under section 302 of the Indian Penal Code for committing murder of Biswanath Garh and sentenced him to imprisonment for life with fine of Rs. 5000/- with default stipulation.

2. The prosecution case in brief is that on 18/09/2007 at about 9 p.m., the appellant Budheswar Karmakar had dealt blows with lathi on the head of the deceased Biswanath Garh near the gate of his house causing grievous injuries. The injured Biswanath Garh was immediately rushed to the Amguri Tea Estate hospital, where after the doctor had referred him to Sivasagar Civil Hospital for treatment. However, the injured had expired at about 10 a.m. on the following day while undergoing treatment at the Sivasagar Civil Hospital.

3. An ejahar was lodged with the Officer-in-Charge of the Halwating Police Station on 19/09/2007 by Chitra Garh, the brother of the deceased, based on which Halwating P.S. Case No. 40/2007 was registered under Section 302 of Indian Penal Code. Inquest on the dead body of the deceased Biswanath Garh was done by the Police and postmortem was also conducted at the Sivasagar Civil Hospital. The Police had seized the weapon of offence i.e. a bamboo lathi.

After completing the investigation, a charge sheet was submitted against the appellant under Section 302 of Indian Penal Code. By the impugned judgement and order dated 20/07/2012, the Sessions Judge, Sivasagar convicted the appellant under Section 302 of Indian Penal Code for committing murder of the deceased Biswanath Garh and thereafter sentenced him to life imprisonment along with the fine as mentioned above.

4. The PW-2 Dr. Pranab Kumar Dutta, who had conducted the postmortem on the dead body of the deceased Biswanath Garh, found the following injuries :-

"Lacerated injury of the scalp of the back of head.

(3) repaired with silk.

(1) 1 Rt. Side 2"

(2) Mid part 1? "/top of head.

(3) Lower back 3"

With underlying collection of blood and fracture of the skull bone."

The doctor in his postmortem examination report opined that the death of deceased was due to coma as a result of head injury sustained by him.

5. Chitru Garh (PW-1) , the brother of the deceased and an eye witness to the incident has clearly deposed that he saw the appellant dealing 3 (three) blows with bamboo stick on the head of deceased Biswanath Garh. He has also testified that the appellant had dropped the lathi in his courtyard and entered his house. Later on, the bamboo lathi was seized by the Police from PW-1.

6. PW-5 Smt. Naini Garh, who is the wife of the deceased was also examined as a witness. PW-5 has deposed that her husband Biswanath was killed by the appellant by making lathi blows in front of their gateway, where after, the appellant had thrown away the lathi. The deceased was taken to the civil hospital at Sivasagar in a vehicle where he died while receiving treatment. During her cross examination PW-5 denied the suggestion that the deceased had sustained injuries due to a fall from his bicycle. The PWs-3, 4, 6, 7, 8, 9 and 10 have supported the prosecution case.

7. The case of the appellant has been one of total denial. During her evidence, the sole witness adduced by the defence as DW-1 i.e. Mrs. Dipali Karmakar, wife of the appellant testified that the deceased had sustained injuries after having fallen down on the ground with the push. However, the PW-2, Doctor who conducted the postmortem has clearly stated in his cross examination that it is most unlikely that the deceased would have received the injuries found on his body by falling on hard substance. A bare look at the postmortem report also goes to suggest that the deceased had received multiple injuries in his skull, brain and spinal cord, which could not have resulted merely by falling from the bicycle. Therefore, the plea set up by the defence stating that the deceased had

died on account of fall from the bicycle on being pushed by the appellant is completely untenable on the face of the materials available on record.

8. The learned counsel for the appellant has prayed for conversion of the sentence to one under Section 304 Part-II of the Indian Penal Code urging that the retort made by the appellant was in response to a misdemeanour on the part of the deceased who had sought to outrage the modesty of his wife. However, from a scrutiny of the materials available on record, we find that the defence side has failed to adduce any evidence in support of the aforesaid plea. As a matter of fact, the DW-1 has clearly admitted during her cross examination that she had neither brought the torn blouse to the Court nor shown it to the Police. Moreover, during the recording of statement under Section 313 of the Code of Criminal Procedure, the appellant has not even made a whisper about any such misdemeanour on the part of deceased making an attempt to outrage the modesty of his wife.

9. For the reasons stated herein above, we are of opinion that there is no merit in this appeal and the same is accordingly dismissed.