

(2016) 04 GAU CK 0026
In the Gauhati High Court
Case No : Crl. A. 95 of 2011

Sri Gajen Das @ Dangar Das and Ors. APPELLANT
Vs
State of Assam RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 447

Citation : (2016) 163 AIC 609 : (2016) 5 GauLJ 269 : (2016) 3 GauLT 315

Hon'ble Judges : A.K. Goswami and Mrs. Rumi Kumari Phukan, JJ.

Bench : Division Bench

Advocate : Mr. Z. Alam, Mr. I. Mazumdar, Advocates, for the Appellant; Ms. S. Jahan, Additional Public Prosecutor, Assam, for the Respondent

Final Decision : Disposed Off

Judgement

A.K. Goswami, J. (Oral) - Heard Mr. Z. Alam, learned counsel for the appellants. Also heard Ms. S. Jahan, learned Additional Public Prosecutor, Assam.

2. This appeal is by three persons, namely, Gajen Das @ Dangar Das; his wife, Bhakuli Das, and their son, Lohit Das.

3. It is submitted by Mr. Alam that Gajen Das expired on 13.02.2012 and, therefore, the appeal has abated so far as Gajen Das is concerned.

4. The appellants were convicted under Section 447/302/34 IPC by the learned Sessions Judge (FTC) No. 1, Kamrup, vide judgement and order dated 31.03.2011 passed in Sessions Case No. 122(K)/96 and sentenced to undergo imprisonment for a term of 3 (three) months for their offence under Section 447/34 IPC and also sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- (Rupees ten thousand), in default, a further term of simple imprisonment of 1(one) year for their offence under Section 302/34 IPC.

5. From a perusal of the judgement, it is seen that one Bihuram Das, who is a son of Gajen Das and Bhakuli Das, and elder brother of Lohit Das, stood trial

upto a particular point of time and, during the pendency of the trial, he absconded as a result of which he was declared a proclaimed offender and, subsequently, the trial proceeded against Gajen Das, Bhakuli Das and Lohit Das culminating in their conviction as indicated herein above.

6. One Janaram Das lodged an Ejahar on 02.02.1994 stating that at around 7-00 P.M. of the previous night, he was in conversation with four persons of the village in the courtyard of one Sri Uran Das and, then, Bihuram Das came and assaulted him and due to the timely intervention of the other persons present there, he was saved from the clutches of Bihuram Das. Thereafter, he came home, but again, armed with a deadly weapon, namely, Nepali Tumuri (a kind of dagger), Bihuram along with Lohit Das, Gajen Das and Bhakuli Das came in a body and confined his wife, Malati Das in the courtyard of his house and, thereafter, Bihuram Das hacked his wife on her head, hand and belly with the "Tumuli" causing grievous injuries upon her resulting in her death. On the basis of the said Ejahar, Hajo Police Station Case No. 35/04, under Section 447/302/114/34 IPC was registered.

7. In due course of time, finding incriminating materials against the accused persons, charge-sheet was submitted. The case being exclusively triable by a court of Sessions, the learned Judicial Magistrate, 1st Class, Hajo, committed the case to the Court of Sessions, Kamrup, and, accordingly, Sessions Case No. 122(K)/96 was registered in the Court of the Additional Sessions Judge (FTC) No. 1, Kamrup, where the case was transferred for disposal.

8. Formal charge under Section 307/447/302 IPC was framed against the accused Bihuram Das and charge under Section 307/447/302/34 of the IPC was registered against all the accused persons.

9. During trial, prosecution examined 12 witnesses and the defence did not adduce any evidence. Their plea is that of denial.

10. PW1, Janaram Das, is the informant and the deceased was his second wife. PW2, Junu Das, is the daughter of PW1 through his deceased wife, Malati Das. PW3, Bina Bala Das, is the third wife of PW1.

11. Evidence of PW1 discloses that while he was sitting in the courtyard of one Uran Das, Bihuram came under the influence of liquor and tried to strangle his neck. The people who were sitting together with PW1, separated them and both of them went for their respective houses. Though in the examination-in-chief he had stated that Bihuram came to his house with a dagger in his hand following his parents and started hacking Malati Das and, thereafter, Gajen and Bhakuli also assaulted him, in his cross-examination, PW1 made a categorical statement that the present appellants did not carry any weapon and Gajen and Bhakuli did not do any harm to Malati. It came out also from his evidence that had Gajen and Bhakuli not moved him away, the blow that fell on Malati would have fallen on him. Therefore, from the evidence of PW1 it appears that Gajen, Bhakuli and Lohit did not take any part in the assault on Malati.

12. The evidence of PW2 would go to show that after the incident in the house of Uran, the parents of Bihuram and Lohit had gone to their residence and had enquired as to what was the quarrel all about. Bihuram subsequently came and stabbed her mother with a sword. From her evidence, it also appears that Gajen Das and Bhakuli Das took her father as well as Binu Das, PW3, aside to save them from assault.

13. PW3, in her evidence, stated that Bihuram had come after about 5 minutes of the arrival of Gajen and Bhakuli. In the Paper Book, in the cross-examination on behalf of Lohit, Gajen and Bhakuli, the word "confronted" is wrongly used and, going by the evidence, it would appear that Gajen Das and Bhakuli Das provided a protective shield to PW3 and her husband and took them to their house.

14. The aforesaid three witnesses were present at the time of the actual occurrence, which is the second incident that had taken place on the fateful day. All other witnesses, apart from the Investigating Officer and the Medical Officer, are reported witnesses or witnesses, who came to the place of occurrence after hearing hue and cry raised by the family members of the deceased.

15. PW4, Mahim Chandra Das, who is a neighbour of the deceased, stated that PW2 had informed him that the accused Bihuram had hacked Malati with a dagger. According to him, PW2 had also told him that Bihuram and Lohit had used threatening words, which are, however, not there in the evidence of PW2 or that of PW1 and PW3.

16. PW5, Kailash Das, also stated in his evidence that Bihuram had caused injuries on the person of Malati Das.

17. PW6, Nauram Das, came to the place of occurrence on hearing shouts of PW1 regarding the assault on Malati by Bihuram.

18. PW7, Ganesh Das, who had gone to the place of occurrence, was informed by PW3 that Bihuram had cut Malati.

19. PW8, Dipak Das, deposed towards the first incident. His evidence is somewhat ambiguous, or maybe it was a case of wrong recording, inasmuch as he stated the persons present there had killed the 1st wife of Janaram, PW1, which is not the case of the prosecution.

20. PW9, Mantu Das, had also deposed that PW1 and his second wife (may be referring to PW3) told him that Bihuram had cut Malati and that he had left. Same is the evidence of PW10, Pradip Das, who stated that on reaching the place of occurrence, PW1 and PW2 had told him that accused Bihuram had killed Malati.

21. PW11 is the Investigating Officer of the case, who had also finally submitted charge-sheet. He also proved Material Exhibits-1, 2 and 3, which are a dagger, a photograph of deceased Malati Das and a blood-stained gamosa, respectively.

22. PW12 is the doctor, who conducted the post-mortem examination.

23. What transpires from the evidence on record is that there was one incident involving Bihuram and Janaram Das, PW1. As the parents of Bihuram as well as his other brother, Lohit, had gone to the residence of Janaram Das, PW1, at best, it may be presumed that Bihuram had disclosed about his quarrel with Janaram, which prompted them to go to the house of Janaram. The fact that the appellants had gone to the residence of Janaram, PW1, to make enquiries about the incident of quarrel that Bihuram had with Janaram cannot clothe them with a criminal intent or prearrangement of mind for committing the crime, which had subsequently been committed by Bihuram. The evidence on record discloses that when the appellants had gone to the house of Janaram, they were unarmed and had not been accompanied by Bihuram, though he landed up in the house of Janaram after about 5/6 minutes of their reaching there. The learned trial Court had taken the act of the appellants going to the house of PW1 as part of common intention, which we are unable to subscribe. The materials on record do not indicate that the appellants shared any common intention with Bihuram to commit the offence of murder. The evidence of PW1 demonstrates that it was only for the protection given to him by Gajen and his wife, he was saved, as otherwise, the blow would have, in all probability, fallen on him. There is no unimpeachable material on record indicating any overt action on the part of the appellants in helping or aiding Bihuram in his assault on Malati. Neither there was any premeditation for commission of the crime by the appellants when they went to the residence of PW1 nor they shared any such intention with Bihuram in the premises of PW1. All the witnesses had deposed in unison that it was Bihuram who had given the blows on Malati and, in the aforesaid factual scenario, we are of the considered opinion that it was an individual act of Bihuram, which resulted in the homicidal death of Malati and the appellants had no role to play in such commission of crime.

24. Taking that view, we are of the opinion that the appellant Nos. 2 and 3 are entitled to be acquitted. Consequently, the impugned judgement and order of the learned trial Court is set aside. The appellants are set at liberty. As Bhakuli Das was granted bail by this Court by an order dated 05.12.2011, passed in Crl. Misc. Case No. 393/2011, her bail bond stands discharged.

25. Registry will send back the records.