
(2013) 10 GAU CK 0029
In the Gauhati High Court
Case No : Criminal Appeal (J) No. 113 of 2010

Sri Harka Bahadur Subba

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2013) 10 GAU CK 0029

Hon'ble Judges : Indira Shah, J; B.D. Agarwal, J

Bench : Division Bench

Advocate : P.K. Talukdar, Amicus Curiae, for the Appellant; S. Jahan, Learned Addl. Public Prosecutor, for the Respondent

Judgement

B.D. Agarwal, J.—The appellant herein stands convicted u/s. 302 IPC vide impugned dated 17.8.2010 passed by the learned Sessions Judge, Sonitpur at Tezpur in Sessions Case No. 133 of 2005. After convicting the appellant for the offence of murder he has been sentenced to undergo Imprisonment for Life and also to pay fine of Rs. 5000/- (Five Thousand) with default stipulation of further rigorous imprisonment for six months. Being aggrieved by the conviction and sentence the accused has preferred this appeal from jail. We have heard Sri P.K. Talukdar, learned Amicus Curiae for the appellant and Smti. S. Jahan, learned Additional Public Prosecutor for the State. Also gone through the evidence on record.

2. Apparently, both the deceased and the appellant are co-villagers living nearby. The prosecution story is that the deceased had lost a notebook wherein a sum of Rs. 100/- was also kept by the deceased. The notebook was lost by the deceased somewhere and it was subsequently found out by the appellant. Thereafter, the appellant demanded a sum of Rs. 5/- from the deceased while handing over the notebook with a 100 rupees note. But the deceased refused to pay even a small amount of Rs. 5/-. Hence, an altercation took place which prompted the appellant to pick up a firewood and the appellant assaulted the deceased with the firewood upon the deceased's head. As a result of the assault the deceased

sustained a fracture on his head.

3. PWs-3 and 4 are the sons of the deceased. They saw the appellant assaulting their father. PW-2 is a witness in whose compound the incident took place. This witness had also stated that she saw the appellant standing near the deceased and attempting to assault him again.

4. Neither in the cross-examination of the prosecution witness nor in his statement u/s. 313 Cr.P.C. any defense plea was put up. In this way, the appellant is not disputing his involvement in the crime. In view of the fact that the deceased had picked up a quarrel with the appellant and that the deceased was assaulted only with a firewood, we hereby convert the conviction of the appellant from Section 302 to 304 PT-II of the IPC. Resultantly the sentence is also reduced to 5 (five) years rigorous imprisonment. In view of the fact that the appellant himself is a poor person we do not propose imposing any amount of fine.

5. With the aforesaid modifications in the conviction and sentence, the appeal stands dismissed.

6. We hereby award a sum of Rs. 50,000/- (Fifty Thousand) as compensation to the family members of the deceased in view of Section 357A of the Code of Criminal Procedure, 1973. The Government of Assam is directed to pay compensation amount of Rs. 50,000/-(Fifty Thousand) only to the family members of the victim. The Government shall deposit the compensation amount in the Office of the learned Sessions Judge, Sonitput-Tezpur within a period of 2 (two) months from the date of receipt of a copy of this order. On receipt of the money the same shall be disbursed to the family members of the deceased on proper identification and after obtaining proper receipt. We also ordered that the learned Amicus Curiae shall be entitled to one day's hearing fees.