
(2013) 07 GAU CK 0035
In the Gauhati High Court
Case No : Criminal Appeal No. 158 of 2010

Sri Naren Mazumdar

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357A
Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2013) 07 GAU CK 0035

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

Bench : Division Bench

Advocate : B.K. Mahajan, Sri N.J. Das, Sri R. Ali and Sri P.K. Das, for the Appellant; B.J. Datta, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Agarwal, J.—The judgment dated 20.07.2010, passed by the learned Sessions Judge, Nalbari in Sessions Case No. 49 of 2006, whereby the appellant herein has been convicted u/s 302 of the Indian Penal Code, 1860 (hereinafter, in short "IPC"), is under challenge. On his conviction for the offence of murder the appellant has been sentenced to undergo Imprisonment for Life and also to pay a fine of Rs. 2,000/- (Rupees Two Thousand), with default stipulation of further RI for 6 (six) months. Being aggrieved with the conviction and sentence the convict has preferred this appeal from jail. We have heard Sri N.J. Das, learned counsel appearing on behalf of the appellant as well as Sri B.J. Datta, learned Additional Public Prosecutor for the State of Assam. We have also perused the impugned Judgment and the evidence tendered by the prosecution in the trial Court.

2. The prosecution evidence is that both the deceased and the appellant were co-villagers and used to take alcohol together on regular basis. On 23.01.2005 also, as usual the deceased was taken away by the accused persons and under the influence of liquor some altercation had taken place and in the midst of altercation the accused persons inflicted fist blows and kicks. Thereafter, the

accused persons themselves took the deceased to the hospital and on the next afternoon the deceased returned home. However, on 25.01.2005, the deceased succumbed to the injuries.

3. PW-1 is the brother of the deceased. He has admitted that an altercation had taken place in between the accused persons and the deceased and thereafter, the deceased was physically assaulted by the accused persons. It may be mentioned here that initially 2 (two) persons were charge-sheeted but the co-accused, Sri Mukut Deka died during the pendency of the case.

4. Sri Das, learned counsel for the appellant did not press for clear acquittal of the appellant. However, the learned counsel submitted that considering the facts and circumstances of the case the period of sentence may be reduced to the period already undergone.

5. Admittedly, the deceased was not assaulted by any weapon, blunt or sharp. In other words, the deceased was given only fist and feet blows, albeit, on the abdomen and as a result, the liver and both the kidneys were ruptured. Besides this, the witnesses have also admitted the fact that having noticed the physical condition of the deceased he was taken to the hospital by the accused persons themselves and the FIR was lodged after two days, i.e., only after the death of the victim and not prior to that.

6. In view of the above facts and circumstances of the case, the conviction of the appellant is converted from Section 302 IPC to Section 304 Part-II IPC. Resultantly, the substantive sentence is also reduced to 3 (three) years" Rigorous Imprisonment. However, the fine amount is increased to Rs. 20,000/-. In default of payment of fine, the accused/appellant shall under further RI for 6 (six) months.

7. With the aforesaid modification in the conviction and sentence, the appeal stands dismissed. If the appellant/accused deposits the fine amount in the trial Court the same shall be paid to the family members of the victim.

8. In addition to the fine payable to the victim's family members, the Government of Assam is also directed to pay compensation amount of Rs. 50,000/- (Rupees Fifty Thousand) to the family members of the deceased as provided u/s 357-A of the Code of Criminal Procedure, 1973. The Government shall deposit the compensation amount in the Office of the learned Sessions Judge, Nalbari, 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. The Registry is directed to return the LCRs. along with a copy of this judgment. At the same time, the Registry shall forward a copy of this judgment to the Chief Secretary, Government of Assam, for necessary action.