

(2012) 05 GAU CK 0109

In the Gauhati High Court

Case No : Criminal Appeal No. 27 (J) of 2005

Sri Parchuram Madhua and Another

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 114, 201, 302, 304, 34

Citation : (2013) 1 GLD 144

Hon'ble Judges : I.A. Ansari, J;A.C. Upadhyay, J

Bench : Division Bench

Advocate : R.K. Adhikary, Amicus Curiae, for the Appellant; K.A. Mazumdar, Addl. PP, Assam, for the Respondent

Judgement

I A. Ansari, J.—This is an appeal against the judgment and order, dated 28.1.2005, passed by the learned Addl. Sessions Judge (FTC), Bongalgaon, in Sessions Case No. 53(B)/1994, convicting the present two accused-appellants u/s 302 read with Section 34, IPC and sentencing each one of them to suffer imprisonment for life and to pay a fine of Rs. 2000/- and, in default of payment of fine, suffer rigorous imprisonment for a further period of one month. The case of the prosecution, as unfolded at the trial, may, in brief, be described as follows:--

On 19.12.93, Jiban Arya (Since deceased) went out of his house with his handcart, but did not return home and, on the following day, i.e. on 22.12.93, in the morning, his dead body was found lying by the side of the road of his village with several injuries on his body, neck and forehead. A trail of blood was also found passing from the place, where Jiban Arya's dead body was found lying, and ending at the Courtyard of Durga Madhua (accused-appellant No. 2). On being informed, in writing, by Gopal Arya, elder brother of the deceased, at Bijni Police Station, about the fact that Jiban Arya had disappeared and his deadbody had been found, as indicated hereinbefore, a case was registered u/s 302, IPC,

based on the written information, which so was lodged by the elder brother of the deceased, treating the same as First Information Report.

2. During the course of investigation, police visited the place, where Jiban Arya's dead body was found lying, held inquest over the dead body and prepared the inquest report. A sketch map was also prepared by the Investigating Officer and, upon arrest of the two accused-appellants, both of them were forwarded to the Court of the Judicial Magistrate for recording their confessional statements. In course of time, confessional statements of the two accused-appellants were recorded and, on completion of the investigation, a charge-sheet was laid, u/s 302/34, IPC, against both the accused-appellants.

3. To a charge framed, at the trial, u/s 302 read with Section 34, IPC, both the accused pleaded not guilty.

4. In support of their case, prosecution examined as many as ten witnesses. On completion of the prosecution's evidence, both the accused were examined u/s 313, Cr PC and, in their examinations aforementioned both of them denied that they had committed the offence, which was alleged to have been committed by them, the case of the defence being that of denial and their confessions being involuntary. No evidence was adduced by the defence.

5. Having, however, found the two accused-appellants guilty of the offence charged with, the learned Trial Court convicted them and accordingly, passed the sentence against them as mentioned above.

6. We have heard Mr. R.K. Adhikary, learned amicus curiae, and Mr. K.A. Mazumdar, learned Addl. Public Prosecutor, Assam.

7. While considering the present appeal, it needs to be noted that there is, admittedly, no eye witness to the alleged occurrence of assault on, and/or killing of, Jiban Arya.

8. The prosecution's case heavily rests on the judicial confessions, which the two accused-appellants are claimed to have made voluntarily, and some circumstantial evidence indicating that the occurrence took place at the Courtyard of accused-appellant No. 2, Durga Ram Madhua.

9. Bearing in mind what have been indicated above, let us, first, come to the medical evidence on record,. The evidence of the doctor (PW 9), who, admittedly, performed the post mortem examination on the dead body of Jiban Arya, reveals as follows:

Injuries:

Both upper and lower limbs:

1. One 8" x 3" x 4" incised injury on the left side of the neck.
2. 5" x 1" x upto scalp depth incised injury on the right side of the forehead.

3. 4" x 1" X 2" on the right incised injury on the parital amince of the vertex.
4. Multiple cut injuries on the left side of the neck and also below lower cheek.
5. Skin of the posterior aspect of the penis is cut.

Cranium and Spinal Canal.

The menigro (montrones) is injured by injury No. 3. The brain matter is coming out.

Other organs were normal.

No. 1 injury has cut the internal carotio artry (left side). No. 3 injury has injured the brain and brain matter have come out through the injury.

10. The doctor has also opined that the death was caused due to shock and haemorrhage, which resulted from the injuries sustained, the injuries being ante mortem in nature. The doctor has further opined that the injuries, sustained by the deceased, were sufficient to cause instantaneous death of a person in the ordinary course of nature and that the injuries, which had been found on the said deadbody, could have been caused by a sharp cutting weapon, such as, Mat. Exhibit-6 ("Beki dao").

11. Except disputing the doctor's opinion, that Mat. Exhibit-6 could have caused the injuries, found on the dead body of Jiban Arya, the defence did not dispute the rest of the findings of the doctor and/or his opinion with regard to the nature of injuries and/or the cause of death of the said deceased. This apart, we do not notice anything inherently improbable or incorrect in the evidence of the doctor (PW 9).

12. We have, therefore, no reason not to rely on the findings of the doctor (PW 9) and his findings clearly indicate that there were one incised injury on the left side of the neck, another incised injury on the right side of the forehead, yet another injury on the parietal region of vertex, brain matter had come out and that there were multiple cut injuries on the left side of the neck and below lower cheek.

13. What needs to be also carefully noted is, that apart from the injuries on the neck, as pointed out hereinbefore, the dead body revealed that the skin of the posterior part of the penis of the deceased had been cut. With this clear and undisputed finding, when we come to the evidence of PW 1, we notice that his evidence is to the effect that on receiving the information about the death of Jiban Arya, he went and saw Jiban Arya's dead body having injuries on neck and head and abrasion on his penis and that police came and prepared inquest report, which is Exhibit-1. The inquest report (Exhibit-1) supports the evidence of PW 1.

14. Coming to the evidence of PW 2, elder brother of the said deceased, we notice that according to his evidence, on the previous day of the occurrence, the

said deceased went out with his cart, but did not return home, and on coming to know, on the following day, that he was lying dead on the western side of the road near Jagadish Saha's house, he (PW 2) went to have a look on the said dead body and, on arriving there, found Jiban Arya's dead body with injuries on his neck and head. It is also in the evidence of PW 2 that the police came to the place of occurrence and seized, amongst others, the wearing apparels of the said deceased. The defence has not disputed the evidence so given by PW 2.

15. So far as PW 4 is concerned, his evidence does not help the prosecution's case inasmuch as he has merely deposed that after the accused was apprehended, the police found a "beki" (curved) "dao" at the house of accused No. 1, Parashuram Madhua, and the same was seized, Mat. Exhibit-6 being the said "beki dao". Here, we may hasten to point out that there is no evidence on record indicating that Mat. Exhibit-6 was the weapon of assault.

16. The evidence of PW 5 is same as the evidence of PW 4 and, hence, the evidence of PW 5, too, does not prove Mat. Exhibit-6 as the weapon of offence.

17. The evidence of PW 6 is also of no help to the prosecution inasmuch as he has merely deposed that on the day of the occurrence, Jiban Arya had come to his house as he was feeling cold and had taken from him (PW 6) a "Chaddar".

18. When we turn to the evidence of PW 7, elder brother of the deceased, Jiban Arya, we notice that, according to him, both the accused are his co-villagers and on 19-12.93, Jiban Arya left his house with his handcart, but did not return home and, on the following day, his dead body was found lying by the side of road.

19. What is significant to notice, in the evidence of PW 7, is that, according to him, he saw a trail of blood marks, where the dead body was lying, leading to the house of accused Durga Ram Madhua and that the said dead body had cut injuries on the neck, forehead, chest and abrasion on the penis. It is also in the evidence of PW 7 that he lodged the First Information Report with the police, police came the place of occurrence, police saw the dead body of Jiban Arya and spots of blood, which he has described hereinbefore.

20. In his cross-examination, PW 7 has clarified that the houses of both the accused are contiguous to each other. This witness has denied the suggestion of the defence that no blood spots were found in the house of accused Durga Ram Madhua. Except, however, offering the said suggestion, which was; denied by the witness (PW 7), nothing was really elicited from the cross-examination of PW 7 to show that a trail of blood from the house of the accused Durga Ram Madhua to the place, where Jiban Arya's dead body was found lying, had not been seen or noticed.

21. Close on the heels of the evidence of PW 7, the Investigating Officer (PW 5) has proved the sketch map (Exhibit-10). The sketch map clearly shows blood spots found in the Courtyard of accused Durga Ram Madhua and blood was also found at the place, where Jiban Arya's dead body was found lying. As the

correctness of the sketch map has not been disputed by the defence, it clearly follows that blood was found, in the Courtyard of accused Durga Ram Madhua and the blood spots had been seen between the Courtyard of the said accused and the place, where the said dead body was found.

22. Bearing in mind what we have indicated above, we come to the evidence of the Judicial Magistrate (PW 8), who has recorded the confessional statements of the two accused. From a careful and close examination of his evidence, it appears that PW 8 had given to the two accused three hours time for reflection and before giving them the time for reflection, PW 8 had made them clearly understand that even if they chose not to confess, they would not be returned to the police and that they were not bound to make any confession, but if they choose to make any confession, then, it could be used against them.

23. Apart from the fact that we do not find anything significant having been elicited from the cross-examination of PW 8 by the defence to show that the confessional statements of the two accused were not voluntary, we have already indicated above, that questions, which were relevant in order to determine if the two accused were willing to confess voluntarily, had been put to the two accused, and thereafter, their confessional statements were recorded. The Magistrate (PW 8) has asserted that he had not seen any injury mark on the persons of the two accused. Though the evidence, so given, was disputed by the defence, there is really nothing on record to show, except the assertion of the defence, that any of the accused had sustained injuries or appeared before PW 8 with injuries on their persons.

24. We are, therefore, clearly of the view that the confessional statements of the two accused-appellants were voluntary.

25. Bearing the above in mind, when we turn to the confessional statement of accused No. 2, Durga Ram Madhua, we notice that his confession reads as under:

The incident took place around 9 p.m. on 19-12-93. Deceased Jiban Arya's character was bad. Parachuram saw him when he was having sexual intercourse with Parachuram. Madhua's daughter. Since Parachuram Madhua charged at him taking a dao in hand, Jiban Arya came in a run to my Courtyard to save himself. At that time, I was sitting at the Courtyard. When Jiban Arya reached my Courtyard, Parachuram Madhua cut his neck with a dao. Jiban fell down on the ground immediately after that and like a cut bowl he died after struggling for life for sometime. The Courtyard was filled with blood. After that, I along with Parachuram Madhua lifted the body of Jiban Arya and threw it beside the road of his village. We cut the tip of his penis during that time since he had committed bad act on a girl of the village.

26. Close on the heels of the confessional statement of accused No. 2 Durga Ram Madhua, the confessional statement of accused No. 1, namely, Parchuram Madhua, reads as follows:

Jiban Arya is my neighbour. He is fickle minded since before. No girl can live peacefully due to him. Around 9 am on 19.12.93 I saw him committing bad act on my paternal uncle daughter. I got enraged and charged at him in order to assault. He fled from the place. I chased after him. Then he, out of fear, went to Durga Ram Madhua's house which was nearby and took resort at the Courtyard. I also reached at the Courtyard and gave a blow in his neck. Almost half of the neck: was cut. Jiban Arya fell on the ground immediately. Then struggling for life for few moments like a cut bowl he died. At that time, Durga Ram Madhua was sitting at the Courtyard. With him, I lifted Jiban Arya's body and threw it beside the road nearby his (Jiban. Arya's) village. During that time we cut the tip of Jiban's penis since he destroyed the lives of many girls/women of the village by committing bad act on them I killed him by cutting his neck on my own will. He did not misbehaved with me I have killed him intentionally

27. We have already held that the confessional statements of the two accused-appellants were voluntary. The question, however, remains as to whether their confessional statements can be regarded true as well. One test, which is, usually, adopted for the purpose of determining if a confession is true or not, lies in considering the confessional statement, in question, in the light of the other evidence on record. If the evidence on record supports the catalogue of events, which a confessional statement mentions, then, the confessional statement can be safely treated to be true.

28. In the present case, the confessional statement of accused Parchuram Madhua clearly shows that seeing Jiban Arya having sexual intercourse with his daughter, he got enraged and charged Jiban Arya to assault him. Jiban Arya fled away from the place, where he had been found having sexual intercourse with the daughter of the accused Parchuram Madhua. The confessional statement of accused Parchuram Madhua also clearly shows that out of fear, Jiban Arya entered into the house of accused Durga Ram Madhna, which house was situated nearby, but accused Parchuram Madhua reached the said Courtyard and gave a blow, on Jiban Arya's neck, cutting almost half of the neck and Jiban Arya fell down on ground and when he was struggling for life, he was further assaulted and, thereafter, with the help of accused Durga Ram Madhua, accused Parchuram Madhua lifted Jiban Arya's dead body and threw the same by the side of the road near Jiban Arya's village, but before doing so, they had cut the tip of Jiban Arya's penis, because, according to accused Parchuram Madhua, Jiban Arya had destroyed lives of many girls/women of the village by committing bad acts like sexual intercourse with them.

29. Broadly in tune with the confessional statement of accused Parchuram, co-accused, Durga Ram, has confessed to the effect that Jiban's character was bad, accused Parchuram saw Jiban, when the latter was having sexual intercourse with Parchuram's daughter, and since accused Parchuram charged Jiban holding a "dao" in his hand, Jiban came running to the Courtyard of accused Durga Ram to save himself and, at that time, Durga Ram was sitting at his Courtyard. It is

also in the confessional statement of accused Durga Ram that when Jiban reached his Courtyard, Parchuram cut Jiban's neck with the "dao", Jiban fell down on the ground and died after struggling, some time, for life. The confessional statement of Durga Ram further shows that the Courtyard was filled with blood and, thereafter, he, along with accused Parchuram shifted the dead body of Jiban and threw it by the side of the road of his village, but before doing so, they (accused Parchuram and Durga Ram) cut the tip of the penis of Jiban, because Jiban had committed bad act on a girl of their village.

30. If the confessional statements, so made by the two accused-appellants, are considered in the light of the medical evidence on record, it becomes more than abundantly clear that the medical evidence on record substantially supports the description of the occurrence, which the two accused revealed in their respective confessional statements, including the fact that the said deceased had sustained injuries on his neck and that the skin of posterior of his penis had been cut. This apart, the evidence on record, which we have discussed earlier, clearly shows blood marks found in the Courtyard of accused Durga Ram Madhua. This is yet another aspect of the evidence on record, which not only lends support to, but also corroborates, the circumstantial evidence and the judicial confessions made by the two accused appellants.

31. Situated thus, we find that the evidence on record proved beyond reasonable doubt that Jiban Arya had been put to death by the accused-"appellant, Parchuram Madhua, but his dead body was removed from the place of occurrence and thrown by accused Parchuram Madhua with the help of the accused-appellant, Durga Ram Madhua at the place, where the same was, later on, found. While, therefore, accused-appellant, Parchuram Madhua, ought to have been held responsible for intentionally causing death of Jiban Arva, accused-appellant, Durga Ram Madhua, could not have been held to have killed Jiban, but he (Durga Ram) could have been held responsible for causing disappearance of the evidence.

32. Coupled with the above, what needs to be carefully noted and appears to have escaped the notice of the learned trial Court is that the confessional statement of accused-appellant, Parchuram Madhua, shows that having seen Jiban Arya in the act of sexual intercourse with his daughter, accused Parchuram Madhua felt enraged, assaulted Jiban Arya and, eventually, killed him at the Courtyard of accused-appellant, Durga Ram Madhua.

33. The assault and killing, in the light of the injuries found on the dead body, have to be treated as intentional. However, in the present case, it cannot be ignored that killing was without any pre-meditation and because of the fact that accused-appellant, Parchuram Madhua, had, on witnessing Jiban Arya having sexual intercourse with his daughter, lost his self control and assaulted the said deceased and, therefore, the offence of the accused-appellant, Parchuram Madhua, falls u/s 304, Part-I, IPC, which punishes culpable homicide not amounting to murder if the person, who died was killed with the intention of

causing death or of causing such bodily injury as is likely to cause death.

34. Since the death is caused, in the case at hand, with the intention of causing death, we are clearly of the view that accused-appellant, Parchuram Madhua, could not have been, and ought not to have been, convicted, in the facts and attending circumstances of the case, u/s 302, IPC and as his offence fell within the ambit of Section 304, Part-I, IPC, he ought to have been convicted accordingly. As far as the accused-appellant, Durga Ram Madhua, is concerned, he abated the act of causing disappearance of the evidence of offence; hence, the accused-appellant, Durga Ram Madhua, ought to have been convicted u/s 201 read with Section 114, IPC.

35. Because of what have been discussed and pointed out above, the conviction of the accused-appellants, u/s 302 read with Section 34 of IPC cannot be sustained and, while accused-appellant, Parchuram Madhua, is hereby held guilty of the offence u/s 304, Part-I, IPC, and also of offence u/s 201, IPC, his co-accused, Durga Ram Madhua, is hereby convicted u/s 201 read with Section 114, IPC.

36. In the context of the facts of the present case, we are of the view that for the offence committed u/s 304, Part-I, IPC, the sentence of imprisonment for 8 (eight) years with a fine of Rs. 1000/- and, in default, rigorous imprisonment for a further period of (six) months, insofar as the accused-appellant, Parchuram Madhua, is concerned, would serve the ends of justice. We, therefore, sentence accused-appellant, Parchuram Madhua accordingly. We also hereby sentence the accused-appellant, Parchuram Madhua, to suffer rigorous imprisonment for 3(three) years with a fine of Rs. 500/- and, in default thereof, to suffer rigorous imprisonment for a further period of 3(three) months. Both the sentences, passed against him, shall run concurrently.

37. We sentence, accused-appellant Durga Ram Madhua, to suffer rigorous imprisonment for 3(three) years with a fine of Rs. 500/- and, in default thereof, to suffer rigorous imprisonment for a further period of 3(three) months.

38. The imprisonment, which the appellants have already undergone, shall be set off, as against the terms of imprisonment, which have been imposed on them.

39. With the above modifications and alterations in the conviction of the appellants and also the sentence passed against the accused-appellants, this appeal is partly allowed.

40. Before parting with the judgment, we would like to put on record our appreciation to Mr. R.K. Adhikary, learned Amicus Curiae for his valuable assistance as Amicus Curiae.

41. Let the learned Amicus Curie be paid Rs. 3,500/-, as fees. Send back the lower Court's records forthwith.