
(2012) 05 GAU CK 0073
In the Gauhati High Court

Sri Rubul Sonowal, S/o.Late Dharmeswar Sonowal, Village-
Laina Dhulijan, P.O & P.S- Makum, District-Tinsukia, Assam

APPELLANT

Vs

Sri Arup Kr.Sonowal, S/o.Sri Tankeswar Sonowal, Village
Makum, P.O & P.S.Makum, District-Tinsukia, Assam.

RESPONDENT

Date of Decision : 29-05-2012

Acts Referred:

Citation : (2012) 05 GAU CK 0073

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : By Advocate : Mr. P. Talukdar, Adv. Respondent : The State of Assam.??By Advocate : Mr. B. S. Sinha, Addl. P. P, Assam., Advocates appearing for Parties

Judgement

1. This appeal is directed against the judgment and order dated 27122002 passed by the learned Adhoc Additional Sessions Judge No.1, Tinsukia in Sessions Case No.122(T)/2001 convicting the appellant u/s 341/307/34 of the Indian Penal Code (IPC) read with Section 25(1)(a) of the Arms Act, 1959 and sentencing him to undergo rigorous imprisonment (RI) for 5 years with fine of Rs.1000/, in default, to undergo further RI for one month for the offence u/s 307/34 IPC, fine of Rs.500/, in default, RI for fifteen days for the offence u/s 341/34 IPC and RI for two years with fine of Rs.500/, in default, to undergo RI for fifteen days for the offence u/s 25(1)(a) Arms Act, 1959, the sentences to run concurrently.

[2] The prosecution case in brief is that one Shri Bhadreswar Sonowal lodged a first information before the Bordubi Police Station on 05041998 alleging that Shri Rubul Sonowal and Shri Raju Sonowal of Laina gaon under PS Bordubi in the district of Tinsukia shot at and injured his son Shri Majid Sonowal by a hand made pistol on 03041998 at about 6pm without any reason with the intention to kill him. The bullet injury was on the right side of his navel but he somehow managed to survive. He had to be hospitalized. The said information was treated

as FIR and on the basis of the same, Bordubi PS Case No.28/1998 u/s 341/326/307/34 IPC was registered.

[3] The police investigated the case and after completion of the investigation, submitted chargesheet against both the accused persons. The case was registered as G.R. Case No.324/1998 before the criminal Court at Tinsukia. Subsequently, the case was committed to the Court of Session for trial.

[4] The learned trial Court framed charge against the two accused persons u/s 341/307/326/34 IPC. The gist of the charge is that the two accused persons on 03041998 at about 6pm in furtherance of common intention wrongfully restrained the victim and caused injury to him with such intention and under such circumstances that if by that act they had caused the death of the victim, they would have been guilty of murder. They were also charged with voluntarily causing grievous hurt to the victim by means of a bullet. When the charges were read over and explained to the accused persons, they pleaded not guilty and claimed to be tried. Subsequently, additional charge u/s 25(1)(a) of the Arms Act was also framed against the appellant.

[5] The prosecution side examined nineteen witnesses to prove the charges against the accused. The defence side did not adduce any evidence. However, their statements were recorded u/s 313 of the Code of Criminal Procedure, 1973 (Cr.P.C). The plea of the defence was of total denial.

[6] After examining the evidence adduced, other materials on record and after hearing the arguments of both the sides, the learned trial Court found that the prosecution had established the case against the accused appellant u/s 341/307/34 IPC read with Section 25(1)(a) of the Arms Act and against the other accused u/s 341/307/34 IPC beyond all reasonable doubt. They were found guilty and convicted accordingly. Consequently, the sentences as indicated above were imposed.

[7] Feeling aggrieved, the accused appellant is in appeal before this Court.

[8] This Court by order dated 25022003 had admitted the appeal. By a separate order dated 30072003, this Court allowed the appellant to go on fresh bail.

[9] Heard Id. Counsel for the parties.

[10] Mr. P. Talukdar, learned Counsel for the appellant submits that the evidence of the prosecution witnesses are wholly contradictory and on the basis of such contradictory evidence, the conviction of the appellant cannot be sustained. Mr. B.S. Singha, learned Additional Public Prosecutor, Assam appearing for the respondent state, on the other hand, submits that the evidence on record clearly established the guilt of the appellant and, therefore, he was rightly convicted. According to him, there is no merit in the appeal and, therefore, the impugned conviction and sentence should be upheld.

[11] The rival submissions have been duly considered.

[12] There are no eyewitnesses to the occurrence.

[13] The evidence of the material witnesses may therefore be examined.

[14] PW 1 is Shri Majid Sonowal, the victim. He stated that on the date of occurrence, he was driving an autorickshaw and at about 6 PM he had returned home. Accused Shri Raju Sonowal called him from his house to go to the residence of one Shri Piling Sonowal. While on way, on the road by the side of the bamboo grove belonging to one Shri Dhaneswar Sonowal, accused Shri Rubul Sonowal fired one round from a hand made pistol as a result of which he sustained injury on the right side of his abdomen. While the accused fled away, he rushed to his house from where his brother Hemanta and brotherinlaw Bhola took him to the police station and to the hospital. In his cross examination, he stated that it was dusk when the incident took place. Though people had come out hearing his hue and cry, he rushed to his house. In a departure from his statement made in his examinationin chief, he stated that at the time of the occurrence, he was driving the autorickshaw.

[15] Shri Bhadreswar Sonowal, the father of Shri Majid Sonowal, is PW 7. He stated that on the day of occurrence, he was at home. At about 6 PM he heard one sound from the side of the road. After about 5/10 minutes, his son came running keeping his hand on his abdomen and fell down on the bed. He reported that accused Shri Raju Sonowal had caught hold of him and the other accused Shri Rubul Sonowal had fired one shot at him from a hand made gun. He saw one little hole in the shirt of his son and blood was coming out of the hole. Thereafter, they took the injured to the hospital. Ultimately, he had to be taken to the Assam Medical College Hospital, Dibrugarh, where he was operated upon. According to him, his daughter Smt. Mridula Sonowal was sweeping the courtyard of his house and she had told him that she saw the accused persons coming to their house and taking his son outside before the occurrence. In his crossexamination, he stated that his son was capable of talking after the occurrence and he saw no grievous injury on his person. He came to the place of occurrence but did not find the accused there. According to him, the place of occurrence was in a thickly populated area. He also did not see any blood stain at the place of occurrence. In a deviation from his version given in his examinationin chief, he stated that while he was at the place of occurrence, the victim was taken to the hospital by his son Prasanta and daughter Mridula. He followed them in a bicycle and caught up with them in the hospital.

[16] Contrary to what he said, his daughter Smt. Mridula Sonowal, PW 6, stated that at the time of the incident she was inside the house and hearing the sound of firing, she came out and saw PW 1 running towards the house in injured condition. According to her, PW 1 was taken to the police station and then to the hospital by her brother and brotherinlaw Bhola.

[17] In his cross examination, PW 8 Shri Bhola Sonowal, the brotherinlaw of the injured, stated that he did not visit the house of the injured after the occurrence.

He had no discussion with the injured in connection with the incident. He had not seen the injury on the person of the victim as it was covered by cloth. According to him, the victim was taken to his house.

[18] From a reading of the above evidence, it becomes quite clear that nobody had seen the accused Shri Raju Sonowal coming to the residence of PW 1 and taking him out. Nobody had also seen accused Shri Raju Sonowal catching hold of PW 1 and accused Shri Rubul Sonowal (appellant) firing at him from a hand made pistol. It was a thickly populated area and though people had come out hearing the sound of firing and hue and cry, nobody saw the two accused persons either at the place of occurrence or running away from there. Moreover, all through the evidence there is a common thread running through the suggestions that some wooden planks were stolen from the residence of one Shri Piling Sonowal and that he suspected PW 1 for such theft.

[19] Now coming to the seizure of the weapon, it is seen that as per the seizure list (ext.2), the weapon (M.ext.A) was recovered from a jungle near a paddy field at Tingrai on being shown by the accused persons, who had kept it concealed. The seizure was made in the presence of four witnesses viz., Farid Khan, Akbar Khan, Sudhangshu Bimal Nath and Nuruddin Ahmed.

[20] Shri Sudhangshu Bimal Nath is PW 13. As noticed above, he is one of the seizure witnesses. In his cross-examination, he categorically stated that he did not accompany the police to the jungle near the paddy field. He did not see the recovery of the pistol by the police. He stated that he could not say whether M. ext.A produced before the Court is the same pistol seized by the police. He could not recollect whether the pistol seized by the police had a trigger but the pistol produced before the Court had no trigger. But the most damaging was his statement that he neither knew the contents of the seizure list nor was it read over to him by the police.

[21] Another seizure witness is Md. Farid Khan, PW 14. He stated that he did not go with the police to recover the pistol and that he cannot say from where the police brought M.ext.A. Like PW 13, he also stated that he did not know the contents of the seizure list.

[22] PW 16 is Dr. Madhab Chandra Rajbonshi, the doctor, who had examined and operated upon PW 1 in the Assam Medical College Hospital, Dibrugarh. One bullet of the size of 2? and of triangular shape was extracted from the abdomen of PW 1.

[23] PW 17 is Shri Lakheswar Mech, the security personal, who had examined M ext.A. He found the same to be a fire arm, serviceable and country made. But in his report ext.5, he did not mention the date and place of examination of the seized pistol.

[24] The bullet which was extracted out of the abdomen of PW 1 was not sent for forensic examination to ascertain as to whether the said bullet was fired from the

handmade pistol M. ext. A.

[25] Thus, from a cumulative assessment of the evidence on record, it is established that PW 1 suffered a single bullet injury on his abdomen. The bullet was subsequently extracted from his abdomen. However, other than the PW 1 himself, nobody had seen the accused persons either calling out PW 1 to the road or shooting at him. Regarding recovery of M.ext.A, two of the seizure witnesses have completely disowned the seizure list (ext.5). Seizure of the pistol therefore cannot be said to have been proved. It cannot also be said with any degree of certainty that M. ext. A is the weapon with which the accused appellant had shot at PW 1. On top of it, the bullet extracted from the abdomen of PW 1 was not sent for expert examination and opinion. There is no material to show that the said bullet matched with M. ext. A and that it was the bullet which was fired upon PW 1 from M. ext. A by the appellant.

[26] In view of the above, this Court is of the considered opinion that it would be very unsafe to come to a definite and conclusive finding that the accused appellant had fired the bullet from M.ext.A causing the abdominal injury on PW 1. In such circumstances, it cannot be said that the prosecution had succeeded in proving the charges against the accused appellant beyond all reasonable doubt. Though there are strong suspicions about the involvement of the accused appellant in the commission of the offence, the same cannot take the place of hard evidence, based on the principle of proof beyond reasonable doubt. If that be so, the accused appellant is entitled to acquittal on benefit of doubt.

[27] Accordingly, the impugned conviction and sentence of the accused appellant is set aside.

[28] Appeal stands allowed.