

(2014) 03 GAU CK 0024
In the Gauhati High Court
Case No : Crl. A. (J) No. 31 of 2011

Sri Swapan Ranbangshi

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 357-A
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 03 GAU CK 0024

Hon'ble Judges : Indira Shah, J; Brojendra Prasad Katakey, J

Bench : Division Bench

Advocate : M.B.U. Ahmed, Advocate Amicus Curiae, Advocate for the Appellant

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—This appeal, by the convict, is directed against the judgment of conviction dated 28.01.2011 passed by the learned Sessions Judge, Hailakandi, in Sessions Case No. 76/2009, convicting the appellant u/s 302 IPC and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs. 5,000/-, in default, to undergo simple imprisonment for further period of 6(six) months. A criminal investigation was set in motion based on the first information report submitted by Pradip Kumar Bania (PW-1) with the Officer-in-Charge of Algapur Police Station on 04.03.2009 alleging that on the previous night i.e. on 03.03.2009 at about 9 P.M. the appellant came to their house and took away his younger brother Sri Bijay Sankar Bania (deceased), who did not return home at night and whose dead body was subsequently found on the morning of 04.03.2009 in Section No. 9 of the Nursery of Barnibridge Tea Estate. On receipt of the said FIR, Algapur Police Station Case No. 24/2009 u/s 302 IPC was registered and the police started investigation. During investigation the police visited the place of occurrence, done the inquest, send the dead body of the deceased for post mortem examination, arrested the accused appellant, who was absconding, recovered the weapon of assault vide Ext.-4 and also recorded the

statements of the persons acquainted with the facts of the case, u/s 161 Cr.P.C. On completion of investigation the police filed the charge-sheet against the appellant u/s 302 IPC. The case being exclusively triable by the Court of Sessions, the accused was committed for trial by the learned Sessions Judge, Hailakandi, and accordingly Sessions Case No. 76/2009 was registered. The charge u/s 302 IPC was framed against the accused appellant on 03.12.2009, which when read over and explained to the accused, he pleaded not guilty and claimed to be tried. Hence the trial commenced.

2. The prosecution in order to bring home the charge framed against the accused appellant u/s 302 IPC, examined 10(ten) witnesses, namely, Sri Pradip Bania (PW-1), brother of the deceased; Sri Mitailal Bania (PW-2), father of the deceased; Sri Sanat Kr. Bania (PW-3), another brother of the deceased; Sri Sudarshan Keot (PW-4), an employee of the tea garden; Sri Bishnu Nath Bania (PW-5), uncle of the accused and witness to the seizure memo (Ext.-2); Sri Bhajanlal Das (PW-6), witness to the seizure memo (Ext.-4); Sri Dulal Rajbongshi (PW-7), another witness to the seizure memo (Ext.-4); Dr. M.R. Laskar (PW-8), who conducted the autopsy on the dead body of the deceased Bijay Sankar Bania and proved the post mortem examination report being Ext.-6; Sri Munna Bania (PW-9), witness to the seizure memo (Ext.-2) and Sri Sujit Chakraborty (PW-10), the Investigating Officer. All these witnesses were cross-examined by the defence. The statement of the accused appellant u/s 313 Cr.P.C. was also recorded. No defence witness was examined by the accused appellant.

3. The learned Sessions Judge upon appreciation of the evidence on record convicted the accused appellant u/s 302 IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/-, in default, to suffer S.I. for further period of 6(six) months. Hence the present appeal.

4. We have heard Mr. M.B.U. Ahmed, learned amicus curiae for the appellant and Mr. Dhanesh Das, the learned Addl. P.P., Assam appearing for the respondent.

5. Referring to the deposition of witnesses examined by the prosecution, in support of the charge levelled against the appellant, it has been submitted by the learned amicus curiae that though there is evidence on record that on the previous night at about 9 P.M. the accused took away the deceased from his house, there being long gap of about 9 hours between the time of such taking and recovery of the dead body, the theory of last scene together cannot be applied in the instant case for the purpose of recording conviction, as there was possibility of meeting the deceased by the person other than the accused. The learned amicus curiae further submits that merely because the accused was found to be absent from his house cannot be a circumstance to record the conviction. It has also been submitted that the prosecution having failed to prove the ingredients of Section 27 of the Evidence Act, the learned Sessions Judge ought not to have held that the accused has led the police to discover the weapon of assault. The learned amicus curiae, therefore, submits that the judgment of conviction recorded by the learned Sessions Judge needs to be set

aside.

6. Mr. Das, the learned Addl. P.P., Assam, on the other hand, supporting the judgment of conviction recorded by the learned Sessions Judge, has submitted that it is apparent from the evidence of PWs-1, 2 and 3 that at about 9 P.M. of 03.03.2009 the accused took away the deceased from their house, who, however, has not returned and who was also not found by the villagers on being searched during the night and whose dead body was found in the tea garden at about 6 A.M. on the next day. It has been submitted that since the accused did not explain what happened after he took away the deceased from his house at 9 P.M., on the previous night, the theory of last scene together has rightly been applied in the case in hand. The learned Addl. P.P. further submits that there are other circumstances completing the chain of circumstances and leading to the guilt of the accused alone, those being the conduct of the accused as he has absconded from the tea garden and was arrested after 3(three) days of the date of occurrence and immediately thereafter he led the police to discover the weapon of assault in presence of the witnesses, namely, Bhajanlal Das (PW-6) and Dulal Rajbongshi (PW-7). The learned Addl. P.P., therefore, submits that the learned Sessions Judge has rightly recorded the judgment of conviction, which does not require any interference in appeal.

7. We have considered the submissions advanced by the learned counsel appearing for the parties.

8. In the case in hand, the death of the deceased, because of the injuries found on his body, which are 36 in numbers, is not in dispute. The defence also did not challenge the opinion of Dr. M.R. Laskar (PW-8) that the injuries found on the person of the deceased are ante-mortem and sufficient to cause the death and such injuries were caused by sharp weapon. The factum of the murder, therefore, has been proved by the prosecution.

9. The defence has challenged the judgment of conviction on the ground that though the deceased was found to be murdered, he being not the author of the crime, he ought not to have been convicted by the learned Sessions Judge. The prosecution in order to prove the charge framed u/s 302 IPC has examined PWs-1, 2 and 3, namely, Pradip Bania, Mitailal Bania and Sanat Kr. Bania, respectively, who have stated that on 03.03.2009 at about 9 P.M. the accused came to their house and took away the deceased. No challenge has been made by the accused appellant to such statement during cross-examination. Coupled with that PWs-1, 2 and 3 as well as PWs-5 and 6 and also PW-10 have proved that the accused was absconding from the tea estate and he could be arrested 3(three) days after i.e. on 06.03.2009 from another tea estate. It is also in evidence of the PWs-1, 2, 3, 6 and 7 that the villagers along with the family members of the deceased unsuccessfully made an attempt to find out the deceased on the night of 03.03.2009, whose dead body, however, was found in the same tea garden at about 6 A.M. in the morning on the next day. PW-10, the Investigating Officer has also proved that the accused has led the police to

discover the weapon of assault, which has been seized vide Ext.-4 seizure memo. The witnesses to the said seizure memo, namely, PWs-6 and 7, have also proved that the accused has made a statement leading to the discovery of the weapon of assault by the police after his arrest on 06.03.2009. The accused though took away the deceased from his house on 03.03.2009 at 9 P.M., he did not explain what happened thereafter though burden lies on him to explain the same. The conduct of the accused of absconding coupled with the statement leading to the discovery of the weapon of assault also goes against the accused appellant. The chain of circumstances is, therefore, complete leading to the guilt of the accused only and no one else.

10. In view of the aforesaid discussion, we are of the view that the learned Sessions Judge has rightly convicted the accused appellant u/s 302 IPC. Hence the appeal stands dismissed.

11. The State Government, in view of framing of the scheme u/s 357-A Cr.P.C., is directed to pay compensation of Rs. 1,00,000/- (Rupees one lakh) only to the father of the deceased, namely, Mitailal Bania, within a period of 1(one) month from today.

12. The learned amicus curiae shall be paid his professional fee of Rs. 7,500/- by the Govt. of Assam, within 1(one) month from today.

13. Registry is directed to send down the records. Registry shall also send a copy of this judgment to the Commissioner and Secretary to the Govt. of Assam, Political Department, for payment of compensation.