
(2019) 12 GAU CK 0012
In the Gauhati High Court
Case No : Criminal Appeal No. 119 Of 2017

State Of Assam

APPELLANT

Vs

Atin Gogoi @ Tarun Gogoi And 3 Ors

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 366
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2019) 12 GAU CK 0012

Hon'ble Judges : Mir Alfaz Ali, J;S. Hukato Swu, J

Bench : Division Bench

Advocate : S. Jahan, N N B Choudhury

Final Decision : Dismissed

Judgement

Mir Alfaz Ali, J

1. Heard learned Addl. P.P., Ms. S. Jahan for the appellant and learned counsel Mr. NNB Choudhury for the accused respondent Nos. 2 to 5.

2. This appeal is directed against the judgment and order passed by the learned Sessions Judge, Sivasagar, in Sessions Case No.120(S-S)/2001, whereby, learned Addl. Sessions Judge acquitted the respondents.

3. An FIR was lodged by Bishnu Baruah (PW1) on 04-05-1994, alleging that his sister Binita Baruah (since deceased) left home for Sivasagar Girls' College to appear in examination and thereafter she did not return. On enquiry he came to know that Atin Gogoi, respondent No. 1 had induced her to elope with him. Initially police registered a case being Sivasagar PS Case No. 184/1994 under section 366 IPC. Later on the said Binita Baruah was found dead and her body was recovered at the instance of one Khagen Gogoi, and as such, the penal provisions of Sections 302 and 201 IPC were added. After completion of the investigation, the police submitted charge sheet against the five accused persons, including the appellant u/s 366/302/201 read with section 34 IPC and

eventually all of them stood trial.

4. In course of trial, charges were framed against all the five accused persons u/s 302/201 IPC read with Section 34 IPC. Further charge u/s 366 IPC was also framed against the respondent No. 1, Ratin Gogoi. All the charges were denied by the respondents. Prosecution examined 28 witnesses to establish the charges and on appreciation of the evidence, learned Sessions Judge convicted the accused Khagen Gogoi u/s 302/201 IPC and acquitted the respondent Nos. 1 to 4 of all the charges.

5. Learned Addl. P.P. assailing the impugned judgment contends, that the learned Sessions Judge without appreciating the evidence in its proper perspective came to a wrong finding to acquit the accused/respondents No. 1 to 4. Per contra, Mr. NNB Choudhury, supporting the acquittal of the respondent Nos. 1 to 4 contends, that there was no legal evidence to rope in the appellants with the commission of offence in the instant case and therefore, the impugned judgment of acquittal warrants no interference. It is also submitted by Mr. Choudhury that if two views are possible the appellate court should not interfere with the findings of the learned trial court.

6. We have considered the submission made by the learned counsel for the parties and meticulously scrutinized the evidence and materials brought on record.

7. PW-1, who lodged the FIR stated in his evidence that the appellant Atin Gogoi developed a relationship with the deceased. However, the PW-1 counselled the deceased and also the appellant Atin Gogoi not to continue with the affairs, whereupon the appellant Atin Gogoi threatened to kill the PW-1. He also stated that on 4th May, when the deceased came to appear in Degree 1st Year Exam, she was forcibly taken away by the accused Atin Gogoi on a motorcycle. He (PW-1) again stated, that when the deceased did not return, she became sure that the deceased might have been forcibly taken away by the respondent Atin Gogoi and therefore, he lodged the FIR. It is also in his evidence that in course of investigation police arrested Khagen Gogoi, who confessed before the police, that he had killed the deceased and on being led by said Khagen Gogoi, police recovered the body of the deceased as well as her belongings.

8. PW-2, Tankeswar Gohain stated in his evidence that he accompanied the police to the house of Khagen Gogoi, where the police seized a red fan. He also stated that accused Khagen Gogoi led the police to the river Dilhi, and on being shown by the accused Khagen Gogoi, a home guard picked up a plastic bundle from the river with the help of one stick which contained a chaddar, a blouse, a red umbrella and a vanity bag belonging to the victim, which were seized by police. This witness further stated that Khagen Gogoi also led the police to the place, where from the body of the deceased was also recovered. He further stated that he had noticed injury near the chest of the deceased.

9. PW-5 deposed that he had seen Binata Gogoi going to the house of Khagen

Gogoi and later on, he heard that the said Binita Gogoi died.

10. PW-9 stated that he had seen the deceased visiting the residence of Khagen Gogoi. However, he never talked to her. PW-11, Putul Mohan deposed that when he was in the shop of his elder brother, Ajit Gogoi purchased wire from his shop. He further stated that Ajit Gogoi belongs to the family of the accused. PW-6 pleaded ignorance about the occurrence. According to him, he only came to know about the death of the deceased from the newspaper. PW-10, PW-14, PW-15 & PW-20 pleaded ignorance about the occurrence.

11. PW-12, who was a photographer attached to the office of the S.P. deposed that he accompanied the police to a 'beel' and took photograph of the dead body of a woman, which was in a gunny bag. On opening the gunny bag, he took the photographs of the body.

12. PW-25 was Rama Kanta Gogoi. According to him, he went to a field at Panbecha, where they picked up a body of a girl from a pond with the help of others.

13. PW-26 deposed about seizure of a Bajaz Super FE scooter from the house of one Ghanashyam Chetia.

14. PW-16 was the Executive Magistrate, who prepared the inquest report of the body of the deceased. According to him, he noticed a cut wound between two breasts measuring 3'x 1". The deceased was wearing a pair of red briefs. He also noticed swelling on the private part of the victim and accordingly he prepared the inquest report (Ext. 2).

15. PW-7 was the Judicial Magistrate, who recorded the statement of PW-6, PW-5, PW-9, & PW-19 u/s 164 CrPC. His deposition is confined to the facts that he recorded the statement of the witnesses.

16. PW-18 deposed to have heard about the killing of the deceased in the house of Khagen Gogoi, Reboti Gogoi and Atin Gogoi. He also stated, that he did not have any personal knowledge about the occurrence.

17. PW-21 stated that the deceased Binita Gogoi having gone to appear in the exam did not return and out of suspicion, Bishnu Gogoi lodged the FIR against the accused Atin. According to PW-22, she went to the police station having heard about missing of Binita and saw the body of Binita at the police station.

18. PW-27, Santanu Chetia deposed that a Bajaz scooter was seized in his presence vide Ext.-14 and he put his signature as a witness.

19. PW-4, PW-7, PW-8, PW-19 and PW-24 were declared hostile by the prosecution. It is the trite law that the testimony of the hostile witnesses does not get washed off the record, only because of declaring them hostile by prosecution, rather, the oral testimony of the hostile witnesses to the extent supporting the prosecution can be taken into consideration. However, on our careful scrutiny of the oral testimony of these hostile witnesses, we find nothing

in their testimony which can be of any use to the prosecution.

20. Dr. Dilip Baruah (PW-13), who conducted the post mortem examination found one incised wound below the xiphisternum downwards towards the right hypochondrium size 3'x 1" x 2" whole right lobe of the liver. In the opinion of the doctor, the death was due to shock and internal haemorrhage due to injuries.

21. Having appreciated the above evidence learned Sessions Judge came to the findings, that there was no cogent evidence on record against the present respondents No. 1 to 4 in order to connect them with the offence of causing homicidal death of Binita and accordingly, convicted the accused Khagen Gogoi alone and acquitted the respondents.

22. On our assessment of the evidence brought on record, we find, that although, there may be evidence raising the finger of accusation towards the accused Khagen Gogoi, so far the respondent Nos. 1 to 4 are concerned, we find no material to connect the respondent Nos. 1 to 4 with the commission of offence in the instant case. We also take note of, that though, there was no direct evidence, learned Sessions Judge relied on multiple circumstances to convict the accused Khagen Gogoi. All the circumstances relied by the learned Sessions Judge and the evidence discussed hereinabove, though implicated the accused Khagen Gogoi, we find no material to attribute culpability to the present respondents. In view of the above evidence, the finding of the learned Sessions Judge holding the respondents not guilty of the offence in the present case, can by no stretch of imagination be held to be unreasonable or perverse and therefore, we do not see any reason to differ with the conclusion arrived at by the learned trial court.

23. The scope of interference with the judgment of acquittal by now is well settled. Dealing with the scope of the appellate court to interfere with the order of acquittal, the Apex Court in *Ashok Ray-Vs.- State of U.P. and Ors.* reported in (2014) 5 SCC 713 observed that unless the appellate court finds the order of acquittal to be totally unreasonable and is convinced that there are substantial and compelling reasons to interfere with it, the appellate court should not interfere with the judgment of acquittal, as the acquittal strengthened the presumption of innocence in favour of the appellant. In *State of Rajasthan Vs. Shera Ram* reported in (2012) 1 SCC 602, the Apex Court observed, that unless the judgment of acquittal is contrary to the evidence and palpably erroneous the court shall be reluctant to interfere with the acquittal. The consistent view of the Apex Court is that unless the judgment of acquittal is demonstrably unreasonable causing gross miscarriage of justice or there is compelling reasons, the appellate court should not interfere with the judgment of acquittal. Even if two views are possible, the appellate court is not supposed to substitute its own view in place of the view of the trial court. Thus, having scanned the evidence in its entirety in the present case, as above, we do not find any compelling reason to interfere with the impugned judgment, or to take a view different from the one taken by the learned Sessions Judge. Being of the above view, we do not

find any merit in this appeal. Accordingly the appeal is dismissed.

24. Send back the record.