

(2013) 08 GAU CK 0061

In the Gauhati High Court

Case No : Criminal Appeal No. 103 of 2008

Suruj Ali (Md.) and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Citation : (2014) 1 GLD 51 : (2013) 4 GLT 516

Hon'ble Judges : Iqbal Ahmed Ansari, J;Indira Shah, J

Bench : Division Bench

Advocate : J.C. Roy Choudhury, Amicus Curiae, for the Appellant; S. Jahan, Addl. PP, for the Respondent

Judgement

Iqbal Ahmed Ansari, J.—This appeal is directed against the judgment and order, dated 11.04.2008, passed by the learned Sessions Judge, Darrang, Mangaldoi, in Sessions Case No. 79(D-M) of 2005, convicting the accused-appellants, u/s 302 read with Section 34 IPC and sentencing each one of them to undergo imprisonment for life and pay fine of Rs. 10,000/- and, in default of payment of fine, suffer rigorous imprisonment for a period of six months. The case of the prosecution, as emerged at the trial, may, in brief, be described as under:

Deceased Manu Ali was brother of Mohammad Ali. Both the brothers lived within a common courtyard. On 06.09.2003, at about 10.00 p.m., as many as eight accused, namely, 1. Md. Mazibur Rahman, 2. Md. Matlebuddin, 3. Malek Ali, 4. Md. Suruj Ali, 5. Md. Gambu Seikh, 6. Zambu Seikh, 7. Md. Akalu Seikh and 8. Md. Gulu Seikh, came, in a group, to the said common courtyard of Manu Ali and Md. Ali and inflicted injuries by means of dagger, dao, etc., on Manu Ali and also broke and damaged his house. Injured Manu Ali was dragged by the accused aforementioned to the nearby jute field and left there, where Manu Ali succumbed to his injuries. By about 11.50 p.m., on 06.09.2003, Manu Ali's daughter, Moklesa Begum, along with Jayanti Das, wife of injured Manu Ali, appeared at Dalgaon Police Station and informed the police, orally, about the occurrence. Based on the oral information, so received, GD Entry No. 136, dated

06.09.2003, was made at Dalgaon Police Station. Acting upon the information, so received, police visited the place of occurrence, but did not find the dead body, though they found Manu Ali's house damaged in the sense that the walls of the house, which were made of thatched bamboo pieces, had been found broken. The police also noticed blood stains on the floor of the house. On the following day, when Manu Ali's dead body was found, a written Ejahar (Ext. 1), was formally lodged by Jayanti Das, widow of Manu Ali, and treating the said Ejahar as the First Information Report (in short, "FIR"), Dalgaon Police Station Case No. 231/2003, under Sections 448 /302 /201 /34 IPC, was registered against the 8 (eight) accused persons aforementioned. Police, then, visited the place of occurrence, held inquest over the said dead body and, on completion of investigation, police laid charge-sheet against the accused aforementioned, under Sections 448 /302 /201 /34 IPC, showing Md. Mazibur Rahman, Md. Matlebuddin, Malek Ali and Md. Suruj Ali as absconders.

2. At the trial, when charges, under Sections 302 and 201 read with Section 34 IPC, were framed against the eight accused aforementioned, all the accused pleaded not guilty thereto.

3. In support of their case, prosecution examined as many as 8 (eight) witnesses. The accused were, then, examined u/s 313 Cr.P.C. In their examinations aforementioned, the accused persons denied that they had committed the offences, which they had been charged with, the case of the defence being that of denial. No evidence was adduced by the defence. During the course of trial, accused No. 1, namely, Md. Mazibur Rahman, died.

4. Having, however, found the present accused aforementioned guilty of the offence u/s 302, read with Section 34 IPC, learned trial Court convicted them accordingly and passed sentence against them, as mentioned hereinabove; but, having found them all not guilty of the offence u/s 201, read with Section 34 IPC, learned trial Court acquitted them accordingly.

5. Aggrieved by their conviction and the sentences passed against them, all the remaining seven accused persons, as a convicted persons, have preferred this appeal.

6. We have heard Mr. J.C. Roy Choudhury, learned counsel, who has appeared as Amicus Curiae, and Ms. S. Jahan, learned Additional Public Prosecutor, Assam.

7. While considering the present appeal, what attracts the attention, most prominently, is that there is no dispute as regards the fact that Manu Ali was assaulted on 06.09.2003 and succumbed to his injuries. What has been in dispute is the involvement of the accused-appellants in the assault on, and killing of, Manu Ali. There is no dispute that Manu Ali's dead body was found on the following day of the occurrence, i.e., on 07.09.2003 nor has it been in dispute that the police visited the place of occurrence on the very night of the occurrence on being orally informed about the occurrence, at Dalgaon Police Station, on 06.09.2003, at about 11.50 p.m. and GD Entry No. 136, dated 06.09.2003, was

accordingly made and the police machinery was moved into action. This oral information, which had set the machinery of law into motion, was, undoubtedly, the FIR and ought to have been proved on record so as to enable the Court know as to what was the information, given to the police, at the earliest point of time including the fact as to whether all or some of the accused were or were not alleged to be persons, who had injured Manu Ali. However, the prosecution has failed to bring on record GD Entry No. 136, dated 06.09.2003. Though the Investigating Officer also, according to the evidence on record, drew sketch maps of the place of occurrence, even the sketch maps have not been brought on record so as to help the Court know and determine as to where exactly the occurrence had taken place.

8. The learned trial Court, it appears, remained a mere spectator and acted as a recording machine and took no steps to bring on record the GD Entry No. 136, dated 06.09.2003, aforementioned or the sketch map or maps. These are serious infirmities with which the trial of the accused-appellants suffers from. The omission to bring the GD Entry No. 136, dated 06.09.2003, and/or the sketch maps, on record, will cause serious prejudice to both, prosecution as well as the defence.

9. What is, now, of utmost importance to note is that a trial Judge is not merely a recording machine of evidence given by the witnesses nor can he be a silent spectator to the evidence produced by the parties. Though a trial Judge must not drop the mantle of a Judge and assume the role of a prosecutor or a defence counsel, the fact remains that his duty is to reach the truth and Section 165 of the Evidence Act gives the Judge adequate power and authority to put any question to any witness at any time-be it during the course of examination-in-chief or cross-examination or at the end of any such examination or reexamination - which, to the Judge, appears to be necessary for a just decision of the case and in order to discover or obtain proof of relevant fact. Though a Judge must not usurp the function of a counsel, he needs to participate, in the trial, in such a manner as would ensure that the evidence, adduced by the parties, is legal and such evidence becomes clear, complete and intelligible. A Judge, who merely sits at a trial and records evidence without caring to conduct examination of the witnesses in order to ensure that evidence on record becomes intelligible, must be held to have not performed his duty as warranted by law. A Judge is not merely an observer. It is his duty to explore, within permissible limits, the truth. If, therefore, a Judge finds that the examination of a witness is not being conducted in such a way as to unfold complete truth, it is not only right for the Judge, but his duty to intervene and put such questions as may be warranted and permissible within the ambit of Section 165. A Judge cannot behave like a passive agent, when a case is tried before him. He has the power and also the duty to question the witnesses in order to elicit relevant materials. A case cannot be allowed to suffer for failure of any of the parties to elicit relevant materials from a witness. It is to discover the truth and bring, on record, the relevant facts that a Judge has been vested with the power to put questions u/s

165. It is with this object in view that the Judge has been vested with the power to call any witness or recall any witness at any time suo moto or at the instance of any of the parties if it becomes necessary for a just decision of the case. If the prosecution omits to bring out any relevant fact or the defence elicits from a witness, in the cross-examination, a statement, which is obscure or incomplete, the defence does not acquire (the Judge must bear in mind) a vested right in such limited cross-examination. It is the duty of the Judge to remove such obscurity or incompleteness by putting appropriate question. In such a case, it is, rather, the duty of the Judge, conducting the trial to elicit from the witness complete information so that the evidence given by him or her becomes clear and intelligible, though his putting of questions cannot be in a manner as if the witness is under cross-examination nor can such examination be aimed at destroying or diluting the effect of the cross-examination of the witness by the defence. It is for this reason that a Court shall not put, in exercise of its powers u/s 165, leading question or put words into the mouth of the witness.

10. In the light of the law as discussed above, one cannot ignore the fact and we must point out that the conviction of the accused-appellants without bringing the contents of GD Entry No. 136, dated 06.09.2003, as well as the sketch maps were serious infirmities in the trial and in the face of such infirmities, the conviction of the accused-appellants cannot be sustained and the present case needs to be remanded back to the learned trial Court for disposal in accordance with law.

11. Because of what have been discussed and pointed out above, the impugned judgment and order, convicting the accused-appellants and the sentences passed against them, are hereby set aside and the case is remanded to the learned trial Court for disposal in accordance with law by bring on record the contents of GD Entry No. 136, dated 06.09.2003, as well as the sketch map or maps by recalling the Investigating Officer or the Officer-in-Charge, Dalgaon Police Station.

12. Before parting with this appeal, we place it on record that we have consciously refrained ourselves from commenting on merit or otherwise of the conviction of the accused-appellants so that the learned trial Court remains free to come to its own independent finding after having brought on record the omitted materials, examining further the accused-appellants u/s 313 Cr.P.C., in the light of additional evidence, which may come on record, and after, of course, having allowed the defence to adduce, if they so seek, such evidence in support of their defence, as may be permissible in law.

13. During the pendency of the trial, the accused-appellants shall be kept detained in the present custody and they shall not be allowed to go on bail and, depending upon the conclusion, which the learned trial Court may, eventually, reach as regards the guilt or otherwise of the accused-appellants, the question of enlarging the accused, on bail, or otherwise, or setting them at liberty, shall be decided.

14. Let the Amicus Curiae be paid a sum of Rs. 5,000/- for his valuable assistance rendered to this Court. With the above observations and directions, this appeal shall stand disposed of.