
(2016) 05 GAU CK 0072
In the Gauhati High Court
Case No : Crl. A. No. 151 (J) and 270 of 2012

Sushil Roy and Anr.

APPELLANT

Vs

State of Assam and Anr.

RESPONDENT

Date of Decision : 26-05-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 4 GauLJ 739 : (2016) 5 GauLR 437 : (2016) 3 GauLT 397

Hon'ble Judges : A.K. Goswami and Dr. (Mrs.) Indira Shah, JJ.

Bench : Division Bench

Advocate : Mr. M. Sarania and Mr. S.U. Ahmed, Advocate, for the Appellant; Ms. S. Jahan, Addl. PP, for the Respondent

Final Decision : Disposed Off

Judgement

Dr. (Mrs.) Indira Shah, J.—Both these appeals are arising out of the Judgment and Order dated 30.10.2012 passed by the learned Sessions Judge, Dhubri in Sessions Case No. 145/2006 against the same person. The accused/appellant has been convicted under Section 302 IPC and sentenced to undergo Rigorous Imprisonment for life and also to pay a fine of Rs. 30,000/- (Rupees Thirty Thousand), in default, further, Simple Imprisonment for 1(one) year. Challenging the Judgment and Order, the appellant filed Criminal Appeal No. 270/2012. An appeal from the jail was also preferred against the Judgment and the same has been registered as Criminal Appeal (J) No. 151/2012.

2. Heard Mr. M. Sarania, learned counsel appearing for the appellant in Criminal Appeal No. 270/2012, and Mr. R.K. Dutta, learned Amicus Curiae appointed in Criminal Appeal (J) No. 151/2012. Also heard Ms. S. Jahan, learned Additional P.P., Assam.

3. The facts of the case, in brief, are that to settle the boundary dispute between the accused and the deceased Chandra Kanta Roy, both along with (P.W. 6), Shri. Ramesh Chandra Roy and Shri. Pratap Chandra Roy went to place of occurrence

and while they were measuring the boundary an altercation took place between the accused and Chandra Kanta Roy (deceased). The accused snatched away the hoe from the hands of Chandra Kanta Roy and inflicted blows on the deceased causing his death. FIR being lodged by Shri. Diben Roy, uncle of the deceased, Golakganj P.S. case No. 34/2005 under Section 302 IPC was registered. During the investigation, the Investigating Officer visited the place of occurrence, recorded the statement of witnesses, drew the sketch map of the site and held inquest on the dead body. The dead body was sent to Dhubri Civil Hospital for post-mortem examination. The hoe used in commission of offence was seized at the instance of the accused. On completion of investigation, charge-sheet under Section 302 IPC was submitted against the accused. The case being exclusively triable by the Court of Sessions, it was committed for trial to the Court of Sessions and then it was transferred to the Court of learned Additional Sessions Judge for disposal.

4. The accused pleaded not guilty to the charge framed against him under Section 302 IPC and claim to the trial.

5. Altogether 13 witnesses were examined by the prosecution. Thereafter, statement of the accused under Section 313 of the Cr.P.C. was recorded, wherein he denied all the allegations levelled against him and pleaded that he is innocent. He, however, declined to adduce any defence evidence.

6. Shri. Ramesh Chandra Roy (P.W. 6) and Shri. Pratap Chandra Roy (P.W. 11) are the two eye-witnesses. Shri Ramesh Chandra Roy (P.W. 6), in his evidence stated that on the date of occurrence, at about 8.30 A.M., Chandra Kanta Roy (deceased) called him to demarcate his land. (P.W. 11) Shri Pratap Chandra Roy also accompanied them for demarcation of the boundary. P.W. 6 deposed that there was a boundary dispute between the accused and the deceased and while P.W. 6 was measuring the boundary with the help of a rope, the accused as well as the deceased showed their boundary. At that moment, an altercation took place between the accused Sushil Roy and the deceased regarding the boundary. Out of anger, the accused snatched away the hoe which Chandra Kanta Roy was holding and gave a blow in the neck of Chandra, who fell down on the ground. Thereafter, the accused again assaulted Chandra Kanta Roy in his shoulder with the hoe. Out of fear P.W. 6 and P.W. 11 Shri. Pratap Chandra Roy fled away. Later, he came to know that Chandra Kanta Roy died on the spot.

7. In the cross examination he stated that there was a dispute in the western boundary of the deceased. At the time of incident, many other persons were working in the neighbouring lands but they did not turn up at the time of altercation between both the parties.

8. It appears from this evidence that the accused was unarmed. This witness could not show why the accused all of a sudden got angry. He reiterated that the accused snatched the hoe from the hands of the deceased from front side and gave a dealt the blows from front side.

9. Shri. Pratap Chandra Roy (P.W. 11) deposed that the incident occurred at around 9/10 A.M. He also stated that there was land dispute between the accused and the deceased and to settle the dispute he was called to the place of occurrence. (P.W. 6) Shri Ramesh Chandra Roy also accompanied him. P.W. 11 saw the quarrel between the accused and the deceased at the place of occurrence. He stated that the accused gave a blow in the head of Chandra Kanta Roy twice in his presence. He also noticed bleeding from the wounds sustained by the deceased. Out of fear he fled away. The victim died instantaneously at the spot. In cross examination he also stated that there were 50-60 persons ploughing and working near the place of occurrence. However, the victim and the accused had not raised any hue and cry. There were only 4 persons available at the place of occurrence. They were the accused, the deceased, Ramesh Chandra Roy (P.W. 6) and P.W. 11. The accused was not armed with sickle or spade. But he assaulted the deceased snatching away the spade from Chandra Kanta Roy.

10. P.W. 1 Ranjit Kumar Roy deposed that on the date and time of occurrence hearing commotion towards the field, he went there and found Chandra Kanta Roy lying dead in the field. He saw injury on his person. He heard from the people assembled there that the accused had killed Chandra Kanta Roy. Inquest of the dead body was held in his presence.

11. P.W. 2 Shri. Deben Roy, P.W. 3 Shri. Anil Roy, P.W. 5 Shri. Pradip Kumar Roy, P.W. 7 Shri. Lakhi Kanta Roy and P.W. 9 Kanchan Bala Roy are reported witnesses. P.W. 2 came to know from the villagers that there has been a quarrel between the accused and the deceased in the field near his house, he went there in a run and saw Chandra Kanta Roy lying dead. He noticed injury in the neck of the deceased. The hoe was seized from the field in his presence. P.W. 3 also saw the deceased lying dead in the field. He heard that the accused killed the deceased. Inquest on the dead body was held in his presence. P.W. 5 saw the dead body with injuries in his head, chest and near shoulder. He was witness to the seizure of the hoe by the police. Some documents pertaining to land were also seized by the police in his presence. P.W. 7 Shri. Lakhi Kanta Roy and P.W. 8 Bimal Ch. Roy were declared hostile by the prosecution. However, P.W. 7 stated that he heard that a person has been killed followed by a quarrel with the accused in the field.

12. P.W. 9 Kanchan Bala Roy, is mother of the deceased. She was also heard that the accused killed her son. She became unconscious hearing the news of death of her son and she did not go the place of occurrence.

13. P.W. 10 Malati Roy, deposed noting about the incident.

14. P.W. 12 Makbul Hussain, is the scribe of the FIR lodged by the informant and he stated that he wrote the FIR as narrated by the informant. He had no personal knowledge of the incident.

15. Dr. Harun Al Rashid, P.W. 4, who is the Medical and Health Officer at Dhubri

Civil Hospital held post-mortem examination over the dead body of Chandra Kanta Roy on 16.02.2005 and found the following:-

- i) 3" x ? " x bone deep sharp incised cut on the left jaw (ramus mandible is cut)
- ii) Left index finger is amputated at distal phalanx.
- iii) One incised cut over the vertex measuring 4" x ? "x bone deep. Brain matter expelled through the cut.
- iv) One incised cut injury over the left mastoid bone measuring 2" x ?" x bone deep and
- v) One incised cut injury measuring 3"x1"x bone deep on the back of the neck.

In the opinion of doctor, death was due to shock and hemorrhage resulting from the injury sustained. In cross examination, P.W. 4 stated that all the injuries were responsible for causing death of the deceased and the injury sustained over head was prime (fatal).

16. P.W. 13, Bhupen Ch. Das is Investigating Officer and he was in charge of Agamani out post at the relevant time. On receipt of the FIR he entered it in general diary and sent it to Golakganj P.S. to register a case. He, thereafter, visited the place of occurrence, recorded the statement of witnesses, prepared sketch map of the site. He held inquest on the dead body and the body was subjected to post-mortem examination. He stated that he seized a spade from near the place of occurrence as shown by the accused (Vide Ext-3 seizure list). He also seized revenue paid receipt of the land, by Chandra Kanta Roy (Vide Ext.4). He arrested the accused and on completion of investigation submitted the charge-sheet against the accused. In cross-examination, he stated that when the accused led him for recovery of the spade, he was not arrested but he was with him. He did not record any statement prior to discovery of the spade, at the instance of the accused. He also did not send the spade to FSL for examination. He however, admitted that the spade was recovered from an open field.

17. Learned counsel appearing on behalf of the appellant has submitted that admittedly there was a land dispute between the accused and the deceased. The accused was unarmed. There was a quarrel between the accused and the deceased at the time of demarcation of boundary of their land. There was no intention on the part of the accused to cause death of the deceased. Therefore, conviction of the accused under Section 302 IPC was unwarranted and the accused ought to have been convicted under Section 304 IPC.

18. Mr. Sarania, learned counsel appearing on behalf of the appellant has relied on the case of Nanak Ram v. State of Rajasthan, AIR 2014 SC (Supp) 1357 wherein in a similar case it was held in para 17.

"A fight suddenly takes place for which both parties are more or less to be blamed and it is a combat whether with or without weapons. It may be that one of them starts it, but if the other had not aggravated it by his own conduct, it

would not have taken the serious turn it did. Heat of passion requires that there must be no time for the passions to cool down and in this case the parties have worked themselves into a fury on account of the verbal altercation in the beginning. Out of the 9 injuries, only injury no. 1 was held to be of grievous nature, which was sufficient in the ordinary course of nature to cause death of the deceased. The assaults were made at random. Even the previous altercations were verbal and not physical. The earlier disputes over land do not appear to have assumed the characteristics of physical combat. This goes to show that in the heat of passion upon a sudden quarrel the accused persons had caused injuries on the deceased. That being so the Exception 4 to Section 300 IPC is applicable. The fact situation bears great similarity to that in *Ghapoo Yadav & Ors. v. State of M.P.* (2003) 3 SCC 528."

19. It is apparent in this case that the accused went to the place of occurrence without any weapon of assault. P.W. 6 and 11 were measuring the land to settle boundary dispute between the accused and the deceased. It is also evident that there was an altercation between the accused and the deceased at the time of demarcation of the land and in a sudden quarrel, the accused snatched away the hoe from deceased and inflicted fatal injuries. The deceased sustained cut injury in his left jaw, incised cut injury in the vertex and cut injury in the left mastoid, cut injuries in the back of his neck. Left index finger of the deceased was also amputated.

20. The injuries sustained by the deceased leads to the conclusion that the accused, with intention of causing such bodily injuries likely to cause death, inflicted the injuries. Therefore, he is liable to be convicted under Section 304 Part I IPC.

21. In view of the above discussions, we set aside the conviction of the accused under Section 302 IPC and we convict him under Section 304 Part-I IPC. The sentence of imprisonment of life is, accordingly, reduced to the R.I. for 7 (seven) years and fine of Rs. 5,000/- (Rupees Five Thousand), in default of payment of fine, further, R.I. for 3 (three) months. We further direct the Legal Services Authority to pay compensation of Rs. 1, 00000/- lakh (Rupees One Lakhs) to the dependants of the deceased in terms of Section 357 (A) Cr.P.C.

22. We appreciate the valuable assistance rendered by learned Amicus Curiae and direct the Assam State Legal Services Authority to pay a remuneration of Rs. 7,500/- (Rupees Seven Thousand Five Hundred) to the learned Amicus Curiae for the services rendered by him in this case.

23. Return the LCR along with a copy of this Judgment and Order.