
(2012) 10 GAU CK 0060
In the Gauhati High Court
Case No : Criminal Appeal No. 117 (J) of 2007

Tarun Baglary

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 300, 302, 324

Citation : (2012) 5 GLT 827

Hon'ble Judges : Adarsh Kumar Goel, C.J;C.R. Sharma, J

Bench : Division Bench

Advocate : Buzarbaruah, Amicus Curiae, for the Appellant; D. Das, Addl. PP, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Sarma, J.—This appeal, from jail, is directed against the judgment and order, dated 30/6/2007, passed by the learned Additional Sessions Judge (FTC), Biswanath Chariali, in Sessions Case No. 168/2007, under sections 324 /302 IPC.

By the impugned judgment and order, the learned Sessions Judge convicted the appellant for the offences under sections 324 /302 IPC and sentenced him to suffer imprisonment for life and pay fine of Rs. 2,000/- in default suffer rigorous imprisonment for two months for his conviction u/s 302 IPC and also suffer rigorous imprisonment for one year for his conviction u/s 324 IPC. It has been directed that both the sentences shall run concurrently. Aggrieved by the said, conviction and sentences, the appellant has come up with this appeal.

We have heard Mrs. M. Buzarbaruah, learned Amicus Curiae appearing for the appellant and Mr. D. Das, learned Additional Public Prosecutor.

2. The prosecution case, in brief, is that on 1.1.2006 at about 3.3.0 P.M., the appellant being armed with a dao (a sharp cutting weapon) caused injuries to his minor son namely Nelson Baglary (P.W. 5) and death to his wife by giving dao

blows on her neck. Sri Bagaram Basumatary (P.W. 1), one of the co-villagers, lodged an FIR with the Police informing about the incident. On receipt of the said FIR (Exhibit 1), Police registered a case and launched investigation into the matter. During the investigation, Police visited the place of occurrence, prepared a sketch map, forwarded the dead body for post mortem examination after preparing inquest report, examined the witnesses, seized a dao, on being produced by the villagers, vide Exhibit No. 2, took the appellant into custody. At the close of investigation, Police submitted the charge sheet under Sections 302 and 324 IPC.

The offence u/s 302 being exclusively triable by the Court of Sessions, the learned SDJM, Biswanath Chariali, committed the case to the Court of Sessions for trial.

Accordingly the learned Sessions Judge, framed charge under Sections 324 and 302 IPC against the appellant. The charges were read over and explained to the accused person, to which he claimed not guilty and claimed to be tried. In order to prove their case, the prosecution examined as many as nine witnesses including the Medical Officers and the Investigating Officers.

After examination of the prosecution witnesses, the accused person was examined u/s 313 Cr. P.C. He denied the allegations, brought against him and declined to adduce defence evidence. Considering the evidence on record, the learned Sessions Judge found the appellant guilty of the offences under Sections 324 and 302 IPC and accordingly convicted and sentenced him as indicated above.

3. Mrs. M. Buzarbaruah, learned Amicus Curiae, appearing for the appellant, has submitted that except the evidence of the minor son of the appellant i.e. P.W. 5, there is no other direct evidence regarding involvement of the appellant. The learned Amicus Curiae, appearing for the appellant, has also submitted that the prosecution failed to establish the case by adducing reliable and cogent evidence and as such the appellant is entitled to the benefit of doubt.

4. Controverting the said argument, advanced by the learned Amicus Curiae, Mr. D. Das, learned Additional Public Prosecutor has submitted that the circumstantial evidence coupled with the direct evidence, given by, none other than, the minor son of the appellant, sufficiently indicate that the appellant had caused the death of the deceased as well as injury to the P.W. 5 and P.W. 4 by means of a dao i.e. a sharp cutting weapon. The learned Additional Public Prosecutor has submitted that the prosecution could prove the charges, beyond all reasonable doubt and as such the learned Trial Judge committed no error by recording the conviction and sentence as indicate above.

5. We have carefully perused the evidence, on record. In the FIR (Exhibit 1) lodged by P.W. 1, it has been clearly mentioned that the appellant had caused the death of his wife and injuries to his sons by inflicting dao blows on 1.1.2006 at about 3.30 P.M. Supporting the said contention, made in the FIR, the

informant aforesaid deposed as P.W. 1. He exhibited the FIR as Exhibit 1 and his signature thereon as Exhibit 1(1). This witness stated that he had seen the appellant being chased by some children and villagers through the road, alleging that the appellant had killed a person. He further stated that he saw the dead body of the wife of the appellant, lying at a distance of about 10 nol i.e. about 120 feet from his house, in the paddy field. He also stated that the incriminating weapon i.e. the dao was seized by the Police vide Exhibit No. 2 in his presence. He has exhibited his signature on the seizure list, as Exhibit 2(1). In his cross-examination, this witness stated that the appellant was detained by the villagers before his arrival at the place of occurrence.

6. Shri Dukharam Basumatary, deposing as P.W. 3, stated that alarm being raised by the children of the appellant, he, along with the villagers apprehended the appellant with a dao in his hand and that the dead body of the appellant was found lying in the paddy field, situated near his house. He further stated that the accused led the villagers to the dead body. From the evidence of this witness, it is clearly found that the accused was found with a dao in his hand, immediately after the incident and that the said dao was taken by the villagers after apprehending the appellant.

7. Sri Madhab Doimari, one of the co-villagers, who also sustained injury at the hands of the appellant, deposed as P.W. 4. According to this witness, hearing the alarm raised by the children of the appellant, he went out and saw the appellant running with a dao in his hand and his youngest daughter on his back. According to this witness, apprehending that the appellant might kill his daughter, he intercepted the appellant but he was assaulted by the latter causing injury on his nose. He further stated that, in the meantime, the villagers also arrived there and rescued the appellants daughter. From the evidence of this witness, who sustained injury at the hands of the appellant, it is clearly found that the appellant was armed with a dao and he was apprehended by this witness along with other villagers.

Though the above mentioned witnesses were cross-examined on behalf of the defence, no contradiction or omission could be proved to demolish their evidence aforesaid.

8. Sri Nelson Baglary (aged about 10 years) who was the minor son of the appellant has been examined, after testing his capability of understanding and with the help of an interpreter. The said minor son of the appellant clearly stated that, on the date of occurrence at about 3 P.M. when they were inside their house, their father came with a dao and gave him blows on different parts of his body. This witness further stated that after assaulting him, the appellant had chased his mother and gave a blow on her neck, outside their house. He further stated that his father had also inflicted injury on P.W. 4. In his cross-examination, this witness stated that Police did not record his statement This witness was thoroughly cross-examined, on behalf of the defence, but no contradiction regarding the involvement of the appellant could be elicited, to

render his evidence disbelievable. Though P.W. 5 was a minor, the evidence given by him does not suffer from any deficiency. Therefore, we find no reason not to accept, the evidence given by the said minor sort of the appellant.

9. Dr. Narayan Ch. Upadhyay (P.W. 6), who examined the appellant found lacerated injury on his scalp and cut injury on his forearm.

From the above discussed evidence, it has been found that the appellant, after the occurrence, was chased and apprehended by the villagers. The appellant also, in his statement u/s 313 Cr. P.C., stated that he was assaulted by the villagers, as a result of which he sustained injury. Therefore, it can be understood that the appellant sustained the said injuries at the hands of the villagers.

10. Dr. Diganta Boro (P.W. 7), who examined P.W. 4 stated that he found a cut injury on the left ala of nose. He opined that the said injury was simple and caused by a sharp cutting weapon.

P.W. 4 stated also that he sustained injury at the hands of the appellant, while trying to apprehend the appellant.

P.W. 5 supported the evidence of P.W. 4 regarding the injury. The said evidence given by P.W. 4, P.W. 5, coupled with the medical evidence of P.W. 7 clearly indicate that P.W. 4 sustained the injury on his nose, on being assaulted by the appellant. Hence, it has been established that the appellant caused the injury on the person of P.W. 4 with a sharp weapon.

11. Dr. J.C. Bay (P.W. 9) performed the post mortem examination of the deceased. He found the following injuries:-

Two nos. of cut injury on the left lateral neck of the lower part transversely size 5 1/2" x 3"x bone deep, cutting one skin superficial tissues muscles, trachea blood vessels, nerves, isofagus and cervical vertebrae C 4th completely cut.

12. The said Medical Officer opined that death was due to shock and profuse hemorrhage as a result of injury sustained. He has also exhibited the post mortem report as exhibit No. 6. From the said medical evidence, it is clearly found that the deceased sustained injury caused by means of a sharp cutting weapon i.e. a dao.

All the non-official prosecution witnesses have stated that the deceased was found dead immediately after the incident and the appellant was found with a dao in his hand and that the said dao was taken away by the villagers, who had apprehended the appellant. P.W. 5 i.e. the minor son of the appellant supported the above evidence of the prosecution witnesses by saying that the appellant, had inflicted blow on the deceased with a dao. Therefore, it has been established that the appellant caused the death of the deceased by inflicting dao blow.

Though the Investigating Officers have been examined as P.W. No(s) 8 and 10, no contradiction in respect of the evidence given by the prosecution witnesses

could be proved to discredit their evidence.

The Investigating Officer, in his cross-examination denied the suggestion put to him, on behalf of the defence, that the appellant had shown abnormal conduct. The Investigating Officer clearly stated that the appellant was not found to be a man of unsound mind. There is nothing on record to show that the appellant, at the time of the occurrence was suffering; from any insanity. Though P.W. 5 i.e. the minor son of the appellant, in his cross-examination, stated that, on the date of occurrence, the appellant had shown some behavior of madness, there is nothing, on record, to show that he was suffering from any insanity, for which he was not in a position to know what he was doing or what was the consequence of the act committed by him. Even, the appellant, in his statement, made u/s 313 Cr. P.C., did not take any plea of insanity.

13. In view of the above discussed evidence, we find no difficulty in concluding that the appellant had caused the death of his wife by inflicting dao blow on her neck and injury on the P.W. 4. There is nothing on record to show that the appellant was either provoked or compelled, in any manner, to commit the said crime. The act done by the appellant does not fall under any of the exceptions provided by section 300 IPC. The nature of the weapon used and the part of the body (neck being a vital part), on which the dao blow was inflicted, indicate that the appellant had given the blow with an intention to cause the death or knowing fully well that the blow given on the neck with a sharp cutting weapon i.e. "dao" was likely to cause death of the person concerned. In view of the above, we are inclined to held that the prosecution could establish, beyond all reasonable doubt, that the appellant committed the murder of his wife i.e. the deceased and injury in respect of respondent No. 4 with a sharp cutting weapon. Therefore, the learned Sessions Judge committed no error by recording the conviction and sentences as indicated above. We find no merit in this appeal requiring interference with the impugned conviction and sentence. Accordingly, the appeal is dismissed. The impugned conviction and sentence are upheld and affirmed.

Return the LCR.

While appreciating the assistance rendered by the learned Amicus Curiae, we direct that that an amount of Rs. 5,000/- (Rupees five thousand) only be paid to the learned Amicus Curiae as her remuneration by the Assam State Legal Services Authority.