
(2011) 06 GAU CK 0022
In the Gauhati High Court
Case No : Criminal A. No. 44 of 2006

The State of Tripura

APPELLANT

Vs

Sri Keshab Debnath

RESPONDENT

Date of Decision : 13-06-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2011) 06 GAU CK 0022

Hon'ble Judges : Utpalendu Bikas Saha, J;C.R. Sharma, J

Bench : Division Bench

Advocate : A. Ghosh, app, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

U.B. Saha, J.—By way of filing this appeal, the State Appellant has challenged the judgment and order of acquittal, dated 29.06.2005, passed by the learned Addl. Sessions Judge, West Tripura, Agartala in Sessions Trial No. 01(WT/A)2003, whereby and whereunder the accused Respondent was acquitted from the charge levelled against him u/s 302 of the Indian Penal Code (for short "IPC").

2. Heard Mr. A. Ghosh, learned Addl. Public Prosecutor for the State Appellant. None appears for the accused-Respondent.

3. The prosecution case, in short, is as follows:

One Birendra Giri (PW.2) lodged a written FIR with the Officer-in-Charge of Bishalgarh Police Station on 20.05.2002 at about 1605 hrs., alleging that his son Maran Giri, aged about 12 years, was invited by his second son-in-law Keshab Debnath on 10.05.2002 to go to his home and accordingly, his son Maran Giri left residence on 11.05.2002 for the house of Keshab Debnath. On the following day, Maran went to the house of the younger daughter of the informant and thereafter returned to the house of Keshab Debnath. Thereafter, on 15.05.2002, Maran Giri again went to the house of the younger daughter of the informant with the bicycle of Keshab Debnath, but did not return to the house. Accordingly,

a missing information was lodged on 16.05.2002 with the Officer-in-charge of Bishalgarh police station. PW.15 Sri Pradip Debnath, the youngest son-in-law, informed the informant about the recovery of a dead body and asked him to identify the said dead body in the morgue of Bishalgarh hospital. Accordingly, the informant went to the Bishalgarh hospital and identified the dead body seeing the wearing apparels. The dead body was recovered from the jungle. The informant suspected that his second son-in-law Sri Keshab Debnath might have committed the murder of the deceased Maran Giri.

4. On the basis of the aforesaid FIR, police registered a case being Bishalgarh P.S. Case No. 39/2002 u/s 302 IPC.

5. The offence being triable by the Sessions Court, the case was committed to the court of the learned Sessions Judge. The learned Sessions Judge, in his turn, transferred the case in the court of the learned Addl. Sessions Judge, West Tripura, Agartala. The learned Addl. Sessions Judge framed the charge against the accused-Respondent, which is as follows:

That, you at any time after morning at 07.30 a.m. of 15.5.2002 and before 15.45 hours of 20.5.2002 at village East Laxmibill under Bishalgarh Police Station did commit murder by intentionally or knowingly causing the death of Maran Giri, son of Birendra Ch. Giri and that you thereby committed an offence punishable u/s 302 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried by the Court of Sessions on the said charge.

6. The accused-Respondent denied the charge and claimed to be tried. The prosecution, to prove its case, examined 20 witnesses including the official witnesses and also relied upon some exhibits like inquest report, seizure list, post mortem examination report etc. Defence also adduced two witnesses, namely Sri Haradhan Deb and Sri Nemai Bhattacharjee as DW.1 and DW.2 respectively.

7. Upon considering the evidence of the prosecution witnesses and the defence witnesses, the learned Addl. Sessions Judge acquitted the accused Respondent on benefit of doubt. Being aggrieved by the order of acquittal as stated supra, the State has preferred the present appeal.

8. Mr. Ghosh, learned Addl. Public Prosecutor, relying on the evidence of PWs. 2 and 12, in his usual fairness submits that the entire prosecution case is based on leading to discovery of the dead body of Maran Giri i.e. the son of the informant and as the said discovery was not properly proved, the learned trial court acquitted the accused-Respondent on benefit of doubt. He also submits that, out of 20 prosecution witnesses, PWs.3,4,5 and 6 were declared hostile as they did not state anything in favour of the prosecution. He ultimately submitted, except the seizure materials, no such evidence is available strictly against the sole accused Respondent, particularly when PW.12 Smti Ratna Debnath (Giri), wife of the accused, who stated that there was a dispute with her husband and her

father and that her husband has illicit relation with one Parul, the wife of his elder brother. According to the learned Addl. Public Prosecutor, enmity can be one of the ground for committing the alleged offence by the sole accused-Respondent and also the extra judicial confession made by him, though the said extra-judicial confession has also not been properly proved by the prosecution.

9. We have gone through the impugned judgment and order whereby and whereunder the sole Respondent was acquitted. We have also examined the evidence of PWs.2 and 12. According to us, the evidence of those witnesses is nothing but a suspicion and a suspicion can't take the place of truth. In our considered opinion the learned trial court, after properly appreciating the evidence on record, acquitted the accused-Respondent on benefit of doubt and such order of acquittal does not warrant any interference by us.

10. By this time, it is settled that, if there are two views plausible, then the view which favours the accused, has to be accepted by the Court. In the instant case, the learned trial judge rightly accepted the views, which favours the accused respondent and passed the order of acquittal.

11. We have seen, normally the Public Prosecutor is more or less inclined to establish the case of the prosecution even when there is no materials on record, but in the instant case Mr. Ghosh, learned Addl. Public Prosecutor, fairly submitted that, on the basis of evidence on record, it can't be said that the prosecution case is well proved rather the entire case of prosecution is based on suspicion. The aforesaid submission of Mr. Ghosh, learned Addl. Public Prosecutor, is appreciated by us. Accordingly, the judgment and order of acquittal, dated 29.06.2005, passed by the learned Addl. Sessions Judge, West Tripura, Agartala in Sessions Trial No. 01(WT/A)2003 needs no interference by this Court.

12. In view of above, the appeal fails. Accordingly, the appeal preferred by the State is dismissed.