

(2022) 12 GAU CK 0009

Gauhati High Court

Case No: Criminal Appeal (J) No. 31 Of 2020

Jogoi Teli

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision: Dec. 13, 2022

Acts Referred:

- Indian Penal Code, 1860 - Section 147, 148, 149, 302, 341
- Code Of Criminal Procedure, 1973 - Section 313

Hon'ble Judges: Suman Shyam, J; Parthivjyoti Saikia, J

Bench: Division Bench

Advocate: N Deka

Final Decision: Dismissed

Judgement

Suman Shyam, J

1. Heard Mr. N. Deka, learned amicus curiae appearing for the sole appellant. Also heard Ms. S. Jahan, learned Addl. P.P. Assam appearing on

behalf of the State/ respondent No. 1. None has appeared for the informant/ respondent No. 2.

2. This appeal from jail is directed against the judgment dated 17-08-2019 passed by the learned Sessions Judge, Hailakandi in connection with

Sessions Case No. 24/2014 convicting the appellant under Section 302 of the Indian Penal Code (IPC) and sentencing him to undergo rigorous

imprisonment for life and also to pay fine of Rs. 5,000/- with default stipulation.

3. The prosecution case, in a nutshell, is to the effect that on 07-05-2012, at around 02:00 p.m. the appellant/ accused Jogoi Teli had hacked the victim

Dilip Teli with a "dao" causing death to him. On 07-05-2012 itself, the wife of the deceased Smti. Binati Teli (PW-1) lodged an ejahar with the

In-Charge of Bilaipur Police Outpost, coming under Lala Police Station, reporting the incident. In the ejahar, 05 persons including the appellant had

been shown as accused persons whereby, it was alleged that the accused persons had gheraoed her husband and the main accused, i.e. the appellant

herein had assaulted him with a "dao".

4. On receipt of the ejahar, GD Entry No. 82 was made and the ejahar was forwarded to the Lala Police Station. Based on the ejahar, Lala P.S. Case

No. 65/2012 was registered under Section 147/148/149/341/302 IPC. The matter was then taken up for investigation by the Police. On completion of

investigation, Police had submitted charge-sheet under Section 147/148/149/341/302 IPC against all the 05 accused persons, i.e. Jogoi Teli, Samru

Teli, Bijan Dutta, Bubul Teli and Sahadar Teli. The learned trial court had accordingly framed charge against the 05 accused persons under Section

147/148/149/341/ 302 of the IPC. It appears that the accused persons had pleaded not guilty and claimed to be tried. As such, the matter went up for trial.

5. During the course of trial, the prosecution had examined as many as 07 witnesses, out of which, PWs-2, 3 and 4 were examined as eye witnesses.

After recording the evidence of the prosecution witnesses, the statement of the accused persons were recorded under Section 313 Cr.P.C. whereby

all the accused persons, except the present appellant, had denied the incriminating circumstances put to them. The appellant has, however, admitted

that he had inflicted blows on the deceased with a "dao". On conclusion of trial, the learned Sessions Judge has held that the charge brought

against the appellant/ accused under Section 302 IPC was established beyond reasonable doubt and accordingly, convicted the appellant and

sentenced him as aforesaid. The learned trial court has, however, held that there was no evidence against the remaining 04 accused persons to

establish their guilt. Consequently, the other four (04) accused persons were acquitted.

6. As noticed hereinabove, the informant in this case is Smti. Binati Teli, i.e. the wife of the deceased. She was examined by the prosecution as PW-

1. This witness has deposed before the court that the incident took place at around 02:00 - 03:00 p.m. At that time, the accused Jogoi Teli had asked her husband to come to his house. When her husband went to the house of Jogoi Teli, the latter had assaulted him with a "dao"™ inflicting blows on the back of his head, as a result of which, her husband fell on the ground. When she went near him, she found him unconscious. The PW-1 has also stated that the remaining accused persons had encircled her husband. When she came near her husband, she found him senseless. She then raised hue & cry. Hearing the same, Sarala Teli (PW-2) and Baikuntha Teli (PW-3) came to that place and saw the incident. Thereafter, she had lodged an ejahar (Exhibit-1) which bears her signature. PW-1 has also stated that the house of Jogoi Teli is situated on the bottom of the "tilla"™ (hillock) and her house was on the top of the same tilla. In her cross-examination, PW-1 has stated that she did not see the incident with her own eyes. The PW-1 has also stated that her house is situated at a distance of 15/16 cubits away from the place of occurrence towards the top of the "tilla"™.

7. PW-2 Sarala Teli is the mother of the informant (PW-1). She has stated that the incident took place at around 02:00 p.m. and at that time, she was in her house. On hearing the hue & cry, she came out of her house and saw that accused Jogoi was inflicting blows on her son-in-law (Dilip Teli) by means of a "dao"™. She had also seen the accused Saday, Babul, Samru and Bijan who had kept the deceased confined. Then she raised hue & cry but none came to the place of occurrence instantly. When the deceased fell down after receiving "dao"™ blows, the neighbouring people came to the place of occurrence. Her house was situated at a distance of 4/5 nals away from the house of her daughter. During her cross-examination, this witness has remained firm that she had seen the accused/appellant Jogoi Teli inflicting blows on the deceased with a "dao"™. The testimony of this witness could not be shaken.

8. Baikuntha Teli (PW-3) was examined as another eye witness to the occurrence. He has also stated that the incident occurred at around 01:00 p.m. At that time, deceased Dilip Teli came from his house towards the bottom of the "tilla"™. Then the accused Jogoi had inflicted blows from the

backside of the deceased with a "dao", as a result of which, Dilip Teli fell down on the ground. At that time, he was in his house. On hearing the hue & cry, he came out of his house. His house was situated at a distance of 02 nals away from the place of occurrence. This witness has also deposed by saying that at the place of occurrence, he had found accused Jogoi, Bijan Bubul and Sambu. In his cross-examination, this witness also could not be shaken.

9. Radhamoni Teli (PW-4) was also examined by the prosecution as an eye witness to the occurrence. He had also deposed that at the time of incident, he was in his house which is situated adjacent to the house of the accused/appellant Jogoi Teli. The incident took place at around 02:00 p.m. He had seen accused Jogoi committing the murder of the deceased alone by means of a "dao". At that time, the other accused persons were not present there. He had raised alarm. After sustaining "dao" blows, deceased Dilip Teli fell down on the ground. In his cross-examination, PW-4 has remained firm by reiterating that he had seen accused Jogoi committing the murder of the deceased. PW-4 has further stated that he did not come to the place of occurrence out of fear. The place of occurrence is situated downwards from the house of Dilip. The PW-4 had denied the suggestion that the accused Jogoi did not kill the deceased.

10. PW-5 is the father of the informant. He did not see the incident but subsequently came to know about the same from his daughter (PW-1), i.e. the wife of the deceased, who had told him that the accused Jogoi had committed the murder of the deceased by inflicting "dao" blows. This witness has also stated that Police had seized a "dao" in his presence and he had put his thumb impression in the seizure list. In his cross-examination, PW-5 has replied that the place of occurrence is situated downwards from the house of Dilip Teli. At the place of occurrence, he had found his wife Sarala Teli who did not find the accused person there. After about ½ an hour other people came at the place of occurrence.

11. PW-6 Dr. S. Chakraborty had conducted the postmortem examination on the dead body of the deceased. PW-6 has proved the postmortem report (Exhibit-6) by identifying his signature therein. According to the postmortem report, the following injuries were found on the dead body:-

One incised wound of size 15cm x 2cm x 3cm in occipital region, (ii) one incised wound of size 10cm x 2cm x 2.5cm just about the wound No. (i), (iii) One incised wound of size 5cm x 1cm x 1 cm in right infra-scapular region, (iv) One incised wound of size 4cm x 1.5cm at the right ankle joint, (v) Incised wound of size 3.5cm x 1.2cm x 1cm at left ankle joint.

There is cut injury of skull bone below the incised wound as described in Injury Nos. (i) and (ii). There is cut injury of dura, arachnoid and piamatter of brain with presence of extradural, subdural, subarachnoid haematoma. There is cut of size 1cm deep cut injury of brain matter (occipital) lobe of brain with intra cerebral haematoma. There are complete linear fracture of occipital, temporal and parietal bone. There are cutting of multiple vessels along the line of incised wound. Ext. 2 is the post mortem examination report, wherein Ext. 2(1) is my signatures.

The doctor had opined the death of the deceased was due to irreversible haemorrhagic and neurogenic shock as a result of multiple incised wounds on body caused by moderate heavy and sharp object. In his cross-examination, PW-6 has clarified that such type of injury will not occur if anybody falls from the height by rolling down.

12. Sri Pijush Kanti Roy was posted at the Bilaipur Police Outpost under Lala Police Station on 07-05-2012 when the incident took place. He is the Investigating Officer (I/O) in this case. PW-7 has deposed as regards the usual steps taken by him for carrying out investigation in connection with Lala P.S. Case No. 65/2012. The PW-7 has deposed that on receiving the ejahar he had made G.D. entry No. 82 dated 07-05-2012 and thereafter, he went to the place of occurrence where he found the dead body of Dilip Teli. On reaching the place of occurrence, he had examined some of the witnesses. Inquest was held by him on the dead body of the deceased and Exhibit-4 is the inquest report. PW-7 has further stated that he drew a sketch map of the place of occurrence, seized a blood stained dhoori seizure list Exhibit-6 and sent the dead body to the Hailakandi Civil Hospital for postmortem examination. On completion of investigation, he had submitted the charge sheet (Exhibit-7) against the accused persons. In his cross-

examination, PW-7 has admitted that he did not send the seized dao to the FSL for chemical examination.

13. By referring to the evidence lead by the prosecution side, Mr. Deka has argued that there are material contradictions and inconsistencies in the testimonies of PWs- 1 to 4 and therefore, PWs- 2, 3 and 4 cannot be treated as eye witnesses to the occurrence. It is also the submission of Mr.

Deka that in his explanation furnished by the accused at the time of recording his statement under Section 313 Cr.P.C. the appellant has stated that

the deceased Dilip Teli used to assault him and his uncle under the influence of alcohol. On the relevant day, the deceased had hired some persons

from Lalacher and being armed with guns, they came to his house and attacked him. Then he took out a "dao" from his house and inflicted

blows on the deceased. Therefore, submits Mr. Deka, there are materials to suggest that the accused had acted in exercise of his right of self defense

which plea was not properly considered by the learned trial court. Mr. Deka, therefore, submits that the conviction of the appellant under Section 302

IPC is unsustainable on such count alone.

14. Responding to the above, Ms. S. Jahan, learned Addl. P.P. Assam has argued that although there are some difference in the versions of the

prosecution witnesses, more particularly, PWs 1 to 4, yet those are minor variants which do not go into the root of the matter. According to Ms. Jahan,

PWs- 2, 3 and 4 have seen the occurrence and their evidence also find due credence from the admission of guilt made by the accused while

answering the question No. 15 during his examination under Section 313 Cr.P.C. As such, submits Ms. Jahan, the charge brought against the accused

has been established by the prosecution beyond reasonable doubt. In view of the above, the impugned judgment and order passed by the learned trial

court does not call for any interference from this Court.

15. We have considered the submission made by the learned counsel for both the sides and have also carefully gone through the materials available on

record. We have noted that PWs- 2, 3 and 4 have claimed to have seen the occurrence. These three witnesses have stated in one voice that it was

none other than the accused Jogoi Teli who had inflicted "dao" blows upon the deceased from the backside causing death to him. Even during

their cross-examination, PWs-2, 3 and 4 had remained firm on their above testimony.

16. Insofar as the PW-1 is concerned, she has admitted that she did not see the incident. However, some confusion has been created due to the

deposition of PW-1 who had also stated that after the occurrence, when she went near her husband, she had found him to be senseless and

accordingly, raised hue & cry. Hearing the same, PWs-2 and 3 came to the place of occurrence and saw the incident. Mr. Deka submits that if the

PWs-2 and 3 came to the place of occurrence after hearing the hue & cry raised by the PW-1 who did not see the incident, then the PWs- 2 and 3

cannot be treated as eye witnesses. Mr. Deka has also pointed out that while PWs- 2 and 3 had stated that they had seen co-accused persons Saday,

Bubul, Sambu and Bijan Dutta had kept the deceased confined, the other eye witness PW-4 has stated that when the accused Jogoi had committed

the murder of the deceased, he was alone and the other accused persons were not present there. Therefore, according to Mr. Deka, there are

material contradictions in the version of these witnesses making their testimonies untrustworthy.

17. From a meticulous reading of the testimony of the PWs- 1 to 4 it appears that the house of the deceased is situated on top of a "tilla"™

(hillock) and the incident occurred at a place which was down-hill. It further appears from the sketch map (Exhibit-5) that the place of occurrence

marked as "A"™ is situated somewhere in between the house of PW-2 and the accused and the house of PW-1 is towards the western side of

the place of occurrence situated about 30 cubit away. Therefore, it is possible that PW-2 has seen the occurrence from her house which was situated

about 100 cubits away towards the southern side but did not immediately come to the place of occurrence. It further appears that it was PW-1, who

was closer to the place of occurrence, had reached there before others but after the incident took place and had raised hue & cry. It was only

thereafter, that the other eye witnesses, viz. PWs- 2 and 3 had reached the place of occurrence. Therefore, we are of the opinion that the PWs- 2 and

3 had seen the occurrence from their respective houses but came to the place of occurrence only after the PW-1 had reached there.

18. Insofar as the presence of other accused persons is concerned, the PW-2 and 3 had mentioned about presence of those accused persons in the place of occurrence by stating that they had kept the deceased confined but it is not clear from their evidence as to the role played by these persons in committing the offence. From the evidence of PWs-2 and 3 it cannot be said with any degree of certainty that those persons were confining the deceased to commit an offence or were trying to help him after he was inflicted with the fatal blows by the accused.

19. As regards the deposition of PW-4 it is possible that he had also seen the occurrence from some distance and the presence of other persons were not immediately noticed by him. Be that as it may, the other accused persons have been acquitted by the learned trial court and the judgment of acquittal has attained finality. What would, however, be significant to note herein that PW-2, 3 and 4 have categorically deposed that they had seen the appellant inflict blows on the deceased and the testimonies of these three eye witnesses have not only remained unshaken but the same also finds due corroboration from the version of one another. These three eye witnesses have clearly stated that they had seen the accused/ appellant Jogoi Teli striking "dao" blows on the deceased leading to his death. The nature of injuries narrated by PWs-2, 3 and 4 finds due support from the postmortem report (Exhibit-2) and matches the opinion of PW-6 as regards the cause of death.

20. We have already mentioned that at the time of his examination under Section 313 Cr.P.C. the accused has admitted to have struck the deceased with "dao". The learned amicus curiae had taken the plea of right of self defense. However, such plea is not borne out from the materials available on record. There is nothing to show that the accused person was attacked by the deceased or any other person armed with lethal weapon. Rather it has come out from the evidence on record that it was the accused/ appellant who had called the deceased to his house and thereafter attacked him on the road with a sharp cutting weapon causing multiple grievous injuries on his body resulting to his death. Under the circumstances, we are of the view that no case for accepting the plea of self defense raised by the appellant can be accepted by this Court.

21. In the case of Ashok Debbarma Vs. State of Tripura reported in (2014) 4 SCC 747 the Honâ€™ble Supreme Court has held that weightage can

be given to the admission of the accused made under Section 313 Cr.P.C. to prove his guilt. After considering the law laid down in the case of Hate

Singh Bhagat Singh Vs. State of Madhya Bharat reported in AIR 1953 SC 468 and in the case of Narain Singh Vs. State of Punjab reported in (1963)

3 SCR 678 it has been held that admission of guilt in Section 313 Cr.P.C. statement cannot be brushed aside. Answers given by the accused in 313

statement can be taken into consideration and can be used for proving the guilt of the accused, if such admission of the accused appears to be

consistent with the prosecution evidence pointing towards the guilt of the accused persons.

22. In the present case, the answer given by the accused under Section 313 Cr.P.C. in response to question No. 15 adequately fits into the prosecution

story and is also well corroborated by the evidence of PWs- 2, 3 and 4. Therefore, his admission of guilt, in our opinion, would lead ample credence to

the prosecution case thereby firmly establishing the charge brought against the accused.

For the reasons stated hereinabove, we do not find any merit in this appeal. The appeal is, accordingly, dismissed.

Send back the LCR.

Before parting with the record, we wish to put our appreciation on record as regards the valuable services rendered by Mr. N. Deka, learned amicus

curiae appearing in this case and recommend that just remuneration, as may be permissible under the existing norms be paid to him.