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**(1988) 03 GAU CK 0006**

**Gauhati High Court**

**Case No:** Criminal Appeal No. 106 (J) of 1984

Kiran Das

APPELLANT

Vs

State of Assam

RESPONDENT

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**Date of Decision:** March 9, 1988

**Acts Referred:**

- Penal Code, 1860 - Section 302
- Penal Code, 1860 (IPC) - Section 302

**Citation:** (1988) 1 GLJ 512 : (1997) 1 GLT 226

**Hon'ble Judges:** S.Haque, J and Srivastava, J

**Bench:** Division Bench

**Advocate:** C.Choudhary, C.Barua, Advocates appearing for Parties

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### **Judgement**

1. This is an appeal against the judgment and order dated 25.8.84 passed by the learned Sessions Judge, Dibrugarh, whereby the appellant was convicted on charge under Section 302 IPC and sentenced to imprisonment for life.

2. Briefly, the prosecution case was that on 21483 at about 8 P.M. when deceased Motiram Das and informant Gonesh Das hereafter the informant were returning from Mohanaghat along the embankment near Namghar at Bhanga Ali, Motiram Das sat down to make water and the informant proceeded further. Immediately there after Kiran Das the accused appellant hereafter the appellant brought an axe from his house which was nearby and gave a blow with the axe at the back of Motiram. When Ganesh Das tried to catch hold of the appellant he was chased by the appellant who then gave a blow with the axe on the face of Motiram Das who died instantaneously The appellant ran away A hue and cry was raised. The informant came to the Police Station, Dibrugarh Sadar, and lodged the First Information Report at 9.30 P.M. the same evening while he was still at the Police Station the appellant also came there and surrendered. The investigation commenced. The I.O. came on the scene of occurrence. Inquest over the dead body

Motiram Das was held and it was sent for post mortem examination, which was conducted by Dr. B. K. Bora, Associate Professor of Forensic Science, Assam Medical College, Dibrugarh on 22483 at about 11.30A.M. The Investigation Officer seized one axe at the instance of the appellant. The witnesses were interrogated. The investigation completed, charge sheet against the appellant was submitted.

3. At the trial, the appellant pleads not guilty to the charge under section 302 IPC.

4. The prosecution produced P.W. 1 Ganesh Das an eye witness and informant, P W. 2 Golap Gogoi and P.W3 Dharmfesar Gogoi, witnesses of the recovery of axe, P.W4 Bhaba Ram Das, son of the deceased who has arrived at the place of occurrence soon after, PW5 Jitu Das and P.W 5 Sibaji Das who were returning after a cinema show and had seen the appellant coming along the embankment immediately after they, had heard "hulla" and on arrival at the place of occurrence had seen the dead body of Motiram Das, P.W7 S.I. Nandalal Saikia"who had taken down the ejahar Ext, I and had commenced investigation, P W8 A. S. I Jatin Dandhora who had also done a part of the investigation, P.W9 S. I. Ananda Ram Bora who has submitted the charge sheet and P.W10 Dr. B. K. Bora who had conducted the Postmortem examination. The defence did not produce any evidence. The learned Sessions Judge held that the charge against the appellant was established and accordingly convicted and sentenced the appellant, as stated earlier.

5. In appeal, Smti M. Borkakaty, learned counsel appearing as amicus curie for the appellant, has submitted that Ganesh Das said to be the only eye witness of the occurrence and who had lodged the First Information Report, had not supported the version I given in the F.I.R. and he could therefore not be considered a reliable witness and that in the absence of any reliable evidence, the finding of the learned trial court that the charge against the appellant had been established could not be sustained.

6. Sri C. Barua learned Additional Public Prosecutor on the other hand has contended that the statement of P.W1 Ganesh Das is quite reliable and there was no material discrepancy in his testimony and the First Information Report and there was no reason to disbelieve his testimony. The medical evidence of Dr. B. K. Bora, without any doubt established that the injuries caused were on vital part and were in nature such that whosoever had caused the injuries had intended to cause death and accordingly the offence committed was "murder" and that the prosecution evidence had very satisfactorily established that the accused had caused the said injuries. Sri Barua has accordingly submitted that the accused appellant was rightly convicted and there was no reason at all for interference with the impugned judgment.

7. We have considered the submission of the learned counsel for the parties and also the evidence on record.

8. P.W10 Dr. B. K. Bora had found the following injuries on the person of deceased Motiram Das.

One deep cut wound on the left half of the face 14 cm length and 4 cm wide which had gone into the oral cavity. The wound also involved the muscles over the left half of the mandible near the angle and also blood vessels with never ending with cut under the wound. The angle of the mandible also cut completely.

In the opinion of Dr. B. K. Bora, the injuries were ante mortem and the cause of death was due to the aforesaid injuries caused by sharp cutting weapon that the injuries were sufficient in the ordinary course of nature to cause death and that the same could be caused by Mat. Ext. 1, the axe. The testimony of Dr. Bora in our opinion is quite reliable and undoubtedly established that the said injuries caused the death of the deceased. Considering the nature of the injuries, there is no doubt in our mind that whosoever had caused the said injuries had intended to cause death and accordingly the offence committed was "murder".

9. The next question to be considered is whether the appellant had inflicted the said injuries and had committed the offence.

It may be noted that the fact that the accused appellant came to the Police Station soon afterwards while P.W1 Ganesh Das was making the F. I. R. and was taken into custody by the Police, is very satisfactorily established by the testimony of P.W1 Ganesh Das who said that while he was, making the F. I. R, (appellant) Kiron Das had come to the Police Station and P.W7, S. I. Nandalal Saikia testified that immediately after the F. I. R was lodged and he had commenced investigation he had found Kiron Das at the Police Station and had arrested him.

10. As P.W1 Ganesh Das said that on the day of occurrence at about 730 P.M. as he was going along the embankment with Motiram Das, the latter sat down to make water that he was a little ahead and then he heard sound like "Dhap" (chopping sound of an axe). He ran back and saw accused Kiron Das and when he went to catch hold of the accused, he chased him (the witness) with an axe and thereafter the accused ran away. He found Motiram Das dead on the spot with cut injuries in the back and the neck which was almost severed. The village people came and immediately he went to the Police Station where he lodged the First Information Report Ext. 1. While he was still at the Police Station, the accused presented himself at the thana.

11. The learned counsel for the appellant, Smt. Borkakaty has submitted that the version given at the trial is not consistent with the version in the F. I. R. where P.W1 Ganesh Das had said that when Motiram Das, deceased, and he had gone to the place of "Mohadeo" (mother's younger sister's husband), Kiron Das had come there and when he and Motiram Das (deceased) left the place, Kiron Das (accused) too accompanied them, while at the trial Ganesh Das has not said so. The learned counsel for the appellant has also submitted that at the trial the witness (P.W 1) has

not specifically stated that he has seen the injuries being inflicted by the appellant and hence the testimony of Ganesh Das was not of any help.

12. We have considered the said variations in the version and we have not found any good and cogent reason to discard the evidence of Ganesh Das. His testimony at the trial is quite consistent in material particulars with the version in the F. I. R. for it was stated that Ganesh Das has accompanied the deceased that the latter had sat down for a while and at that time the injuries were inflicted with an axe and he had died on the spot. The appellant was seen by Ganesh Das immediately after the injury was inflicted he heard the sound "Dhap" and he had found accused, with an axe that soon thereafter he had found Motiram Das dead with injuries on the neck and back, that the witness had immediately thereafter gone to the Police Station and lodged the F. I. R. and that at that time appellant had also come there and was apprehended.

We therefore, think that the testimony of P.W.I Ganesh Das is quite reliable. P.W6 Jitu Das and P.W6 Sibaji Das who were coming after cinema show had heard "hulla" and soon after had seen the accused appellant going away with an axe in his hand, and on arrival at the place of occurrence had found Motiram Das with injuries on his person died. Their testimony provides reliable support, that soon after occurrence when "hulla" was raised they had seen the accused appellant going away from the place of occurrence with an axe in his hand.

13. The material Ext 1, the axe, was also recovered by P.W7, S.I. Nandalal Saikia and seizure memo was prepared which was signed by P.W2 Gohp Gogol and P.W3 Dharmeswar Gogol, P.W7 S.I. Nandalal Saikia has deposed that he had recovered the axe at the instance of the accused appellant. This fact is duly mentioned in the Seizure Memo Ext 2. While it is true that P.W2 Golap Gogoi and PW5 Dharmeswar Gogoi have not exactly supported the recovery of the material Ext. 2} the axe, in their presence, but it is their evidence that accused was present at the time. Considering the fact that accused had surrendered and was taken into custody on the date of the occurrence itself and the axe was later recovered, we have not found any good reason to discard the testimony of P.W7 S.I. Nandalal Saikia that the axe had been recovered at the instance of the appellant. We accordingly hold that the prosecution has satisfactorily established the fact that the material list. 1 had been recovered at the instance of the appellant. The axe was not sent for any serological examination and that evidence is not available to connect Material Ext. 1, the axe as the weapon of offence. In any case, however, the fact that the axe, material Ext. 1 was recovered at the instance of the appellant is quite consistent with the prosecution version that the offence was committed with an axe.

14. On consideration we think that the testimony of Ganesh Das, P.WI, who had accompanied the deceased and had seen the occurrence and which finds support in the testimony of P.W5. Jitu Das and P.W6 Sibaji Das who had seen appellant immediately after the occurrence going away, with an axe in his hand and the fact

that Ganesh Das had immediately lodged the First Information Report and also the facts that while he was doing so, the accused appellant had come to the thana and had been taken into custody and later the material Ext. 1, the axe, which could be the weapon of "murder" was recovered at the instance of the appellant clearly established that it was the appellant who had caused the injuries with the axe, which had resulted in the instantaneous death of Motiram Das. We are inclined to agree with the learned Sessions Judge that the prosecution had successfully established the charge under section 302 IPC against the appellant beyond any reasonable doubt, and he was therefore rightly convicted and sentenced to imprisonment for life.

15. For the aforesaid reasons, the appeal fails and is dismissed. The appellant is in jail. He shall serve out the sentence.