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Gauhati High Court

Case No: Criminal Appeal No. 128 (J) of 2012

Sontosh Bailung		APPELLANT
	Vs	
The State of Assam		RESPONDENT

Date of Decision: Aug. 23, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 357A
- Penal Code, 1860 (IPC) - Section 302, 304, 307, 326, 34

Hon'ble Judges: B.D. Agarwal, J

Bench: Single Bench

Advocate: M. Biswas, Amicus Curiae, for the Appellant; B.J. Dutta, Addl. PP, for the Respondent

Judgement

B.D. Agarwal, J.

The appellant herein stands convicted u/s 304 Part-I of the Indian Penal Code vide judgment dated 18.9.2012 passed by the learned Sessions Judge, Dhemaji in Sessions Case No. 60(DH) of 2007. After convicting the appellant he has been sentenced to undergo Rigorous Imprisonment for 10 years and also to pay fine of Rs. 10,000/- with default stipulation further RI for one year. Being aggrieved by the conviction and sentence the accused has preferred this appeal from jail. Heard Mr. M. Biswas, learned Amicus Curie for the appellant and Mr. B.J. Dutta, learned Addl. PP, Assam. Also gone through the impugned judgment and the prosecution evidence.

2. The gist of the prosecution case is that on 1.1.2006 two groups of young boys went for a picnic on the same spot. While the deceased was returning from the picnic spot with his friends the accused and his fellow members from the other group obstructed him on the way and an altercation took place. Suddenly, the appellant stabbed the deceased with a knife. The accused was apprehended on the spot and the deceased was taken to different hospitals for treatment. The deceased succumbed to the injuries after 11 (eleven) days of the incident.

3. The FIR was lodged on 5.1.2006 by the father of the deceased alleging that 4/5 unknown persons had assaulted his son with sharp weapon. Initially, Silapathat PS Case No. 3 of 2006 u/s 341 /326 /307 /34 of the Indian Penal Code was registered. Subsequently, Section 302 of the IPC was added after the death of the victim. After completion of the investigation the appellant was charge-sheeted and after the trial he has been convicted u/s 304 Part-I of the IPC.

4. Altogether 13 witnesses were examined by the prosecution; including autopsy doctor. Out of these witnesses some persons are from the group of the accused. Naturally they are not expected to support the prosecution story. However, the fact remains that even the colleagues of the accused/appellant have also admitted about going to the picnic on the same spot. In his statement u/s 313 of the Criminal Procedure Code the accused has not taken any alibi or disputed the fact that he had gone for a picnic or that no argument or altercation took place with the deceased.

5. On the other hand, PWs 4, 8 and 10 are claiming themselves to be the eye witnesses. PW 4 has deposed that while they were returning from the picnic party a group of persons stopped them and an altercation and marpit took place. Suddenly, the accused Sontosh Bailung stabbed the deceased with a knife on his chest. PW 4 has further deposed that when the accused tried to flee away from the scene he was detained and handed over to one Nityananda Gogoi. However, there was delay in arresting the accused since the formal FIR was lodged on 5.1.2006 and the investigation practically started on 11.1.2006. The case diary also reveals that the accused could be apprehended on 16.2.2006 and all these period the accused was absconding

6. PWs 8 and 10 have also deposed that the appellant suddenly stabbed the deceased. However, in the cross-examination these PWs have admitted that he did not state before the Investigating Officer that they themselves have seen the accused stabbing the deceased. For my satisfaction I have consulted the case diary and find that PW 8 had stated before the I.O. that after hearing the outcry of the deceased he went near him and thereafter the accused was caught on the spot to prevent from fleeing away. To this extent PW 8 has corroborated the testimony of PW 4. PW 10 also claimed to be eye witness of the murder. This witness has also admitted that he did not see the actual stabbing. Be that as it may, PW 10 is also corroborating PW 4 regarding detention of the accused on the spot and also about altercation/quarrel.

7. As per the autopsy doctor he found two stitch wounds on the chest. Be that as it may, in the opinion of doctor the victim died due to septicemia as a result of injuries, which were ante-mortem in nature.

8. After going through the entire evidence on record I hold that there is no evidence on record to take a view that the offence was committed by any other person except the accused. On the other hand, the eye witnesses have also implicated the appellant in the offence of culpable homicide.

9. Keeping in mind that the offence was committed in the midst of quarrel and altercation and also considering the fact that the victim died after 11 (eleven) days the offence is converted from Section 304 Part-I of the IPC to Section 304 Part-II of the IPC. Resultantly, the sentence is also reduced to 4 (four) years RI. However, the amount of fine of Rs. 10,000/- as awarded by the trial court, is maintained. For non payment of fine the accused/appellant shall undergo further RI for six months instead of one year.

10. With the aforesaid modification in the conviction and sentence the appeal stands dismissed.

11. The learned Sessions Judge, Dhemaji is directed to issue modified custody warrant.

12. The Government of Assam is directed to pay compensation amount of Rs. 1,00,000/- (Rupees one lac) only to the family members of the victim, as provided u/s 357-A of the Code of Criminal Procedure, 1973. The Government shall deposit the compensation amount in the Office of the learned Sessions Judge, Dhemaji within a period of 2 (two) months from the date of receipt of a copy of this order. On receipt of the money the same shall be disbursed to the father of the deceased on proper identification and after obtaining proper receipt.

13. The Registry is directed to return the LCRs within a copy of this judgment. At the same time, the Registry shall forward a copy of this judgment to the Chief Secretary, Government of Assam for necessary action. The learned Amicus Curie shall be entitled to one day''s hearing fee.