(1999) 01 GAU CK 0013

Gauhati High Court

Case No: Criminal Appeal No. 191 (J) of 1995

Dulu Sutradhar		APPELLANT
	Vs	
State of Assam		RESPONDENT

Date of Decision: Jan. 6, 1999

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 134
- Penal Code, 1860 (IPC) - Section 302, 323, 34

Citation: (1999) CriLJ 1679 : (1999) 1 GLT 47

Hon'ble Judges: P.C. Phukan, J; D.N. Choudhury, J

Bench: Division Bench

Advocate: N. Bora, Amicus Curiae, C.R. De, H.R.A. Choudhary, M.H.R. Barbhuyan and K.A. Mazumdar, for the Appellant; J. Singh, Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

P.C. Phukan, J.
By the judgment and order dated 4-8-95 passed in Sessions Case No. 52/94, learned Sessions Judge, Cachar at Silchar convicted the accused Dulu Sutradhar and Naru Das u/s 302/34, IPC and sentenced them hereunder to imprisonment for life and also to pay fine of Rs. 2000/- each, in default, to further two month''s R.I.

2. The accused Dulu Sutradhar filed Criminal Appeal No. 191(J)/95 and the accused Naru Das filed Criminal Appeal No. 199/95 against their conviction and sentence as aforesaid.

3. By an order dated 8-7-96 passed in Criminal Appeal No. 191(J)/95, this Court directed, "this appeal will be connected with Criminal Appeal No. 199/95 and will be listed together for hearing". Accordingly., it is proposed to dispose of Criminal Appeal No. 191 (J)/95 and Criminal Appeal No. 199/95 by this common judgment

after hearing both the appeals listed together.

4. Considered the record of the case and heard Mrs. J. Bora, learned counsel appearing as the Amicus Curiae for the accused-appellant Dulu Sutradhar and Mr. HRA Choudhury, learned counsel for the accused-appellant Naru Das and Mr. J. Singh, learned Public Prosecutor for the respondent State of Assam.

5. The facts leading to these appeals may be stated briefly as follows. On 13-4-1994, P.W.I Rajeswar Singh, a gang Sardar of FCI godown at Ramnagar, informed the Assistant Manager, FCI in writing (Ext. 1) that on 12-4-1994 at about 6 p.m. Jagadish Roy (deceased), a gang labourer, left Ram Nagar with his monthly salary and on 13-4-1994 at about 9-45 a.m. his dead body was found near rail line at Durganagar. P. W. 1 further informed that P.W. 8 Agarjit Singh, a private labourer, accompanying the deceased last night, was also found injured. The Assistant manager, forwarded Ext. 1 to Tarapur Police Out Post. P.W. 11 Sub-Inspector, incharge of this Out Post, already received such information from PW. 5 Nantu Deb and made G.D. entry Ext. 5. P.W. 11 forwarded Ext. 1 to Silchar Police Station for registration of a case, visited the place of occurrence, drew sketch map Ext.- 6, P.W. 9 another Sub-Inspector held inquest (Report Ext. 2) on the dead body. P.W. 2 Dr. K. K. Chakrabarty, Associate Professor of Forensic Medicines, Silchar Medical College Hospital, performed post mortem examination (Report Ext. 3). P.W. 10 Dr. Abhijit Homchoudhury, Medical Officer, Silchar Civil Hospital, examined the injured P.W. 8. During investigation it came to light that on the date of occurrence while P.W. 8 and the deceased were returning home walking along the Railway line, accused Naru Das demanded Rs. 1,000/- and when the deceased refused to pay any money caught hold of him, and the other .accused Dulu Sutradhar stabbed him in the abdomen and also stabbed P.W. 8 in his back. The police arrested both the accused persons and on completion of the investigation charge-sheeted them u/s 323/302/34, IPC.

6. After commitment of the case to the Court of Session, a charge u/s 323/302/34, IPC was framed, read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. In the trial the prosecution examined 11 witnesses. In their examination u/s 313, Cr. P.C. the two accused persons pleaded innocence and declined to adduce any evidence. The defence case was one of total denial. In cross-examination of P.W. 8 Agarjit Singh, the defence suggested that he falsely implicated the accused persons and that it was he who stabbed the deceased as there was quarrel between them.

7. After considering the evidence on record and hearing the prosecution and the defence, learned Sessions Judge acquitted the accused persons u/s 323/34, IPC but convicted them u/s 302/34, IPC and sentenced them thereunder as stated above hence these appeals.

8. I have gone through the evidence on record. P.W. 2 performed the post mortem examination on the dead body of the deceased on 13-4-94 at 2.20 p.m. and found

the following injuries :-

(1) Penetrating injury 7 cm above the umbilicus in mid line slightly oblique with abrasion mark on the right side along the wound measuring 1 cm x Vz cm x abdominal cavity deep directed right to left above downwards. The margins of the wound were regular.

(2) Abrasion along the left iliacrest (lower abdomen) laterally over an area of 6 cm x 4 cm.

(3) Abrasion in dorsum on the left hand along the base of the right finger measuring 1 cm x Vi cm.

(4) Abrasion 1 cm below the base of right little finger on the dorsum of hand measuring 11/2 cm x 1/2 cm.

9. The doctor opined that the death was due to shock and haemorrhage as a result of injuries caused by sharp weapon, homicidal in nature and approximately 12 to 24 hours passed since death. In cross-examination the doctor said that a sharp pointed nail could cause the injury No. 1 and fall on Railway line could cause injury Nos. 2, 3 and 4. The Inquest report Ext. 2, shows that dead body was found lying on the middle of the road leading to the house of Nirod Sharma and Nidaran Das. In examination-in-chief P.W. 2 categorically opined that the death was homicidal in nature. We accept this in the facts and circumstances of the case.

10. The pertinent question is whether the two accused-appellants caused the death of the deceased. In this regard, the prosecution relied only on the evidence of P.W. 8 Agarjit Singh who claimed to be the sole eye witness and the evidence of P.W. 7, stated to be a reported witness. In para 19 of the impugned judgment, the learned Sessions Judge said, "P.W. 8 Agarjit Singh, allegedly injured in the case, is only eye-witness to the occurrence and P.W. 7 is another witness to whom he had reported about the occurrence stating the names of the accused on the next morning." But P.W. 8 nowhere in his evidence said that he had reported to P.W. 7 about the occurrence stating the names of the accused persons on the next morning. P.W. 9 only said,-

On the next morning while Sardar Suresh Singh and Sibcharan came to the house of Charitra, I reported to them (Suresh and Sibecharan) that Dulu and Naru stabbed me and Jagadish was also stabbed by them.

P.W. 8 did not say that he made such report to Suresh and Sibcharan in presence and within the hearing of P.W. 7. Nor PW. 7 said anywhere in his evidence that P.W. 8 reported to him that the two accused-appellants stabbed the deceased. P.W. 7 just said -

On the next morning when Sardar Suresh Singh and Sincharan Singh came and asked Agarjit what had happened, Agarjit told them (Suresh Singh and Sincharan

Singh) that in the previous night while he and Jagadish were coming from the market, accused Naru and Dulu stabbed Jagadish and him.

It thus transpires that P.W. 8 Agarjit did not report to P.W. 7 that the two accused appellants were the assailants. P.W. 8 reported this to Suresh and Sincharan, and P.W. 7 did not say that they were reported in his presence and within his hearing. Strangely enough, neither Suresh nor Sincharan was examined by the prosecution and no explanation has been offered for such non-examination. Thus the prosecution was left with the sole testimony of the solitary witness P.W. 8 to connect the two accused-appellants with the alleged offence.

11. It is true that u/s 134 of the Evidence Act, no particular number of witnesses shall in any case be required for the proof of any fact. In Vadivelu Thevar Vs. The State of Madras, it has been held that -

Generally speaking, oral testimony in this context may be classified into three categories, namely, (1) wholly reliable, (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable. In the first category of proof, the Court should have no difficulty in coming to its conclusion either way. It may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subordination. In the second category, the Court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the Court has to be circumspect and has to look for corroboration in material particular by reliable testimony, direct or circumstantial.

12. In the instant case, the evidence of single witness P.W. 8 is neither wholly reliable nor wholly unreliable in view of the following infirmities -

(1) P.W. 8 deposed that the accused Dulu stabbed the deceased in the abdomen and also stabbed him in the back. P.W. 10 doctor, who examined him, found no injury in his back, and the learned Sessions Judge refused to convict the accused Dulu on the charge of causing any injury in his person.

(2) P.W. 8 said in examination-in-chief, "I was a tenant of Nantu. Accused Dulu and Naru are neighbours of Nanthu. Thus I know them". In cross-examination P.W. 8 denied the defence suggestion that he did not say so before the Investigating Police Officer. P.W. 11, the Investigating Officer, when confronted, confirmed that P.W. 8 did not say so before him. What is more, Nantu (P.W. 5) also did not say that P.W. 8 was his tenant. Thus P.W. 8''s claim that he knew the two accused appellants since before the occurrence is doubtful.

(3) P.W. 8 said in examination-in-chief, "I recognised the accused in the big lights of Indian Oil and the FCI." In cross-examination P.W. 8 denied the defence suggestion that he did not say so before the Investigating Officer. P.W. 11 the Investigating Officer, when confronted, confirmed that P.W. 8 did not say so before him. Thus P.W. 8''s statement that he could recognise the accused persons in the big lights of

Indian Oil and the FCI cannot be safely acted upon.

(4) In cross-examination P.W. 8 said, "I know Silchar Police Station and so also Tarapur Top. At night I did not say to anybody about the occurrence. On the next morning also I did not come to the Police Station." He also did not enquire about the condition of the deceased who was stabbed allegedly in his presence. The evidence of P.W. 8 who exhibited such abnormal behaviour, hardly inspires confidence.

(5) In examination-in-chief P.W. 8 said, "I came running to the house of Charitar P.W. 7. Chatitar asked what had happened but due to fear I could not state anything. He took me to the Civil Hospital. "P.W. 7 Charitar said in examination-in-chief, "About one year ago at about 9 p.m. Agarjit (P.W. 8) came to my residence at Tarapur with bleeding injury. When I asked how he received the injury, he said nothing. Agarjit fell down. I lifted him and again asked what had happened. Then also he did not reply. I took Agarjit to Civil Hospital. "In cross-examination P.W. 7 added, "we were at Civil Hospital for about half an hour. We told nothing to the doctor." In the facts and circumstances of the case, P.W. 8''s explanation that he could not say anything out of fear is thoroughly unconvincing. The significant failure on the part of P.W. 8 to disclose the names of the assailants is only consistent with the conclusion that he was unable to identify them.

13. In the absence of corroboration in any material particulars by reliable testimony, direct and circumstantial, I am not prepared to run the judicial risk of staking the verdict on the sole testimony of the single witness P.W. 8 with infirmities as stated above. In any case, a reasonable doubt is cast to the prosecution case so far as the implication of the two accused-appellants is concerned, and the benefit thereof must be given to them.

14. In view of what is stated above, the conviction and sentence awarded to the two accused appellants by the impugned judgment and order are set aside.

15. The two accused appellants are acquitted of the offence u/s 302/34, IPC, they shall be set at liberty forthwith if not required in connection with any other matter. The fine, if already paid, shall be refunded to them.

16. The learned counsel Mrs. J. Bora, appearing as Amicus Curiae, shall be entitled to the legal fees as admissible under the Rules. Both the appeals are allowed.

D.N. Chowdhury, J.

17. I have had the advantage of reading the draft judgment. 1 also agree with the judgment and I too would allow the Appeals. I, however, propose to allude to the following aspects of the matter.

18. English Lawyers from time to time enounced fundamental principles which they accept as a basic on elementary of the Criminal Jurisprudence. Viscount Sankey L.C. in his famous speech in Woolmington v. D.P.P. (1935) AC 462 professed that

"throughout the web of English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the person''s guilt...." Lord Goddard, C.J., in Brenu v. Wood (1946) LT 306 said". . it is of utmost importance for the protection of the liberty of the subject that Court should always bear in mind that, unless a statute, either clearly or by necessary implication, rules out mensrea as a constituent part of a crime, the Court should not find a man guilty of an offence unless he has a guilty mind."

19. There is a clear distinction between the standard of proof in Criminal and Civil Proceedings, Lord Denning succinctly stated the differentiation in Millar v. Minister of Pensions (1947) 2 All ER 372 while addressing on the degree of potency which the evidence on a criminal charge should reach observed. "The degree is well settled. It need not reach certainty, but it must reach a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it is admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence,", of course it is possible but not in the least probable", the case is proved beyond reasonable doubt, but nothing short of that will suffice".

20. Section 134 of the Evidence Act does not limit or indicate the number of witnesses in any case".. No particular number of witnesses shall in any case be required for the proof of any fact.." It is for the Court to act upon the testimony of witnesses. It is not the number but the quality of testimony that is material, it must also be kept in mind that there is generally a marked aversion/ distinctions of persons in appearing as witnesses. Generally the Court of fact may act on the testimony of solitary witness who is neither an accomplice, collaborator nor in any way akin to such an associate but an ordinary witness, without corroboration, unless of course the circumstances demands for such corroboration, Ramratan and Others Vs. The State of Rajasthan, and in AIR 1989 236 (SC) Unless the Statute insists, for corroboration, the Court is not to persist for such confirmation, except in cases where the nature of the testimony of the sole witness itself warrants for such corroboration. Rule of prudence in such case will naturally called for such corroboration. It all depends on facts and circumstances of each case Vadivelu Thevar Vs. The State of Madras, a witness is to be weighed and the temptation to seek confirmation in all cases is to be avoided. The tendency to attempt to apply the technique of mathematics in the matter of assessment of evidence requires to be evaded.

21. The testimony of an injured witness has its own relevance and efficacy. The fact that the witness was injured at the time and in the same occurrence lends a confidence to the testimony that the witness was present at the time of occurrence and very convincing ground would be required to discard such evidence when an injured witness name the assailants so much so that it cannot be readily said that

such witness would omit the real assailant and falsely implicate an innocent person in absence of proven animosity. Similarly all form of discrepancies in the testimony of witness cannot be treated as fatal. Discrepancies in the statement of witnesses which do not materially affect the veracity of testimony do not create infirmity in a prosecution case. More so, when the witness is not shown to be partisan or in any way inimically disposed towards the accused. Even if a witness is not reliable he cannot be labelled as false witness when the case against the accused depends on the evidence of a sole eye-witness it may be enough to sustain the conviction." given on sterling testimony of a competent, honest man...."

22. In this context, it is useful to recall the following observation of Justice The State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh,

...A criminal trial is not like a fairy tale wherein one is free to give flight to one''s imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime which while he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures....

Each case, is to be decided on its own fact. Courts, often felt that it is better that people who are probably guilty should go free than those whose innocence is reasonably possible, should be convicted. The reason being that the consequences of the conviction of a innocent person is far more serious than wrongful acquittal. It is an accepted practice that when the Court entertain a reasonable doubt regarding the guilt of the accused, the benefit must go to the accused. Nonetheless, the doubt regarding the guilt of the accused should be a doubt of a reasonable person, it is not the doubt of vacillating mind which is incapable of reaching a firm conclusion or so diffident and timid that which lacks the confidence - scared and apprehensive to take things to their natural consequences. The Court while judging the situation is to discern the evidence in the yardstick of probabilities, its intrinsic worth and adjudicate the situation on the balance human probabilities guided by the common sense, with the aid of the experience of life.

23. It is fallacious to brush aside evidence for discrepancies alone. The maxim "Falsus in uno, falsus in omnibus" (false in one thing, false in every thing) is neither a healthy rule nor a wholesome exercise. One seldom finds a witness whose testimony is free from any iota of untruth, or some overstatement and embellishment. It is the duty and function of the Court to assess and analyse the evidence and remove the chaff from the grain. Exaggeration and falsehood on

points which do not affect the core of prosecution case are not to be given undue importance. Discrepancies in evidence and probability of the prosecution version is to be taken into account to judge the genuineness of the evidence. The weight of evidence is a quantitative assessment of the probative value of the evidence. Facts are to be appraised objectively through the acquired intellectual habit, subordinating one''s pre-conceived notions and ideas. Assiduous assimilation of the fact situation rather than law, is the key exercise in determining the guilt of the offender. Every Criminal trial is a crusade for public justice to punish the guilty and restore peace and tranquillity in the society.