

(2012) 08 GAU CK 0054**Gauhati High Court****Case No:** Criminal Appeal (J) . No. 158 of 2007

Sri Cheniram Bhuyan

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Aug. 14, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 357A
- Penal Code, 1860 (IPC) - Section 302, 324

Hon'ble Judges: Indira Shah, J; Adarsh Kumar Goel, J**Bench:** Division Bench**Advocate:** Rafiqul Islam, Amicus Curie, for the Appellant; Z. Kamar, learned PP, Assam, for the Respondent**Final Decision:** Dismissed**Judgement**

I. Shah, J.

The appellant herein arrayed as accused in Sessions Case No. 73(J)/2004 for murder of one Punilal Kurmi and causing injury to Humeswar Kurmi, were sentenced to imprisonment for life with fine of Rs. 1,000/- in default rigorous imprisonment for 2 months for the offence of murder. One 3.6.2003 Harimoti Kurmi sister of the informant expired. The informant along with other villagers took the dead body to their land for cremation as per their custom. The accused came and restrained them from cremating the dead body on the land. Other people who accompanied the victims left the place leaving the accused and victims. The victims insisted that cremation would be at the place, claiming that the land belong to them. The accused then showered bloody assault on Punilal by means of a weapon. Punilal sustained extensive wounds and died on the spot. Humeswar Kurmi was also assaulted by the accused. Rameswar Kurmi father of the deceased lodged an FIR. Police registered a case and on completion of investigation submitted the charge-sheet u/s 302/324 IPC against the accused.

2. Heard Mr. Rafiqul Islam, learned Amicus Curie and Mr. Z. Kamar, learned Public Prosecutor, Assam for the State.

3. PW7, Dr. Siba Prasad Bordoloi conducted the post-mortem examination on the dead body of deceased Punilal Kurmi on 4.6.2003 and his findings are as follows:

Injuries: Deep penetrating injury over the left side of anterior chest wall 2cm below left nipple one 2cm wide with sharp cutting edge which involves the heart, left lung and vessels. The injury caused the laceration of the lower part of the heart and left lung. Perfusing blood cots inside thorax from the wound.

In the opinion of doctor, injuries are antemortem in nature, caused by long penetrating weapon, cause of death was due to shock and blood loss from the injuries sustained, and the injury is sufficient to cause death.

4. There is no dispute that Punilal Kurmi was murdered at the time and place mentioned by the prosecution. The antemortem injuries observed by the doctor who conducted the post-mortem examination has been detailed in the post-mortem report. The nature of injury was on vital organ of the deceased and without difficulty we could observe that the deceased would have died instantaneously.

5. None of the witnesses except Humeswar Kurmi (C.W.1) saw the occurrence. C.W.1 although was cited as witness he was not examined by the prosecution. He was therefore, examined as Court witness. The evidence of C.W.1 was found quite reliable by the trial Court and his evidence was corroborated by other witnesses.

6. P.W.3 Molan Gowala was declared hostile by the prosecution. However, in his cross-examination by the prosecution he admitted they carried the dead body of Harimoti for cremation. The accused told Punilal that he will not allow him take part in funeral on the land. Punilal then replied he cannot restrain him as the land belong to him and that he will perform the last rites on that particular piece of land. Then accused grabbed Punilal and assaulted him. Punilal screamed and then his brother Janta came forward in his rescue. The Janta was also assaulted by the accused.

7. PW8 corroborating the evidence of PW3 stated that the accused resisted the victims to perform last rites and cremation of body of Harimati on the land. The local people then went down to bank of river leaving Punilal and Janata. After some time they heard hulla that accused assaulted Punilal & Janta. They rushed to the site and saw Punilal lying dead in front of house of the accused. PW8 further stated that Janta was shifted to hospital in injured condition.

8. PW9, Dr. M. Chetry examined the victim Humeswar Kurmi on 4.6.2003 and found penetrating wound on anterior chest wall 1/2" x 1/2". In the opinion of doctor the injury was fresh, simple and caused by sharp pointed object.

9. In this case PW3 and PW8 saw the accused at the place of occurrence resisting the victims to take part in funeral. The accused was thus last seen together with the

deceased. In the case of State of U.P. Vs. Satish, it has been held.

The last seen theory comes into play when the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

10. In this case in addition to evidence of C.W.1 there is positive evidence that the accused and deceased were seen together by witnesses PW3 and 8.

11. The weapon of assault, chisel was recovered at the instance of accused. PW2 Lolit Ch. Ghatwal and PW5 Jayanta Deka stated that Chisel, weapon of assault was recovered at the instance of accused.

12. The entire prosecution case revolves around the evidence of C.W.1 and circumstantial evidence. The presence of C.W.1 at place of occurrence has not been mentioned. However the PW8 stated that one "Janta" brother of deceased also sustained injury in course of incidence. Prior to lodging of formal written F.I.R., oral information was lodged to police. The information so lodged was entered in General Diary and the General Diary entry Ex. 6 clearly depicts that Punilal (deceased) and Janta Kurmi were assaulted by the accused. PW1 who lodged the formal written ejhar did not see the occurrence. PW2 also stated that apart from Punilal another younger son of the informant sustained injury. Injured Homeswar was examined by the doctor. His injury report was collected by the investigating officer and submitted alongwith the charge-sheet. In view of the circumstances it can be safely relied upon that Homeswar was present at the site of occurrence at the relevant point of time.

13. The motive commission of crime is The victims claimed the land belong to them whereas the accused was disputing their ownership of land, resisted him to perform funeral of their relative.

14. The accused was last seen alongwith the victim.

15. The weapon of assault was seized at the instance of the accused.

16. The prosecution proved the charge u/s 302 IPC against the appellant beyond all reasonable doubt. The trial Court came to the right conclusion in convicting and sentencing the appellant for the offence u/s 302 IPC. Therefore, the judgment passed by the trial Court is upheld.

17. In view of judgment passed in Criminal Appeal No. 93(J)/2005 and in the light of judgment passed in the case of Binod Karmakar -Vs- State of Assam 2012(1) GLT 693 with regard to compensation to the dependants of victim u/s 357 A Cr. P.C. as an interim measure the State Government is directed to deposit an amount of Rs.50,000/- (Rupees Fifty Thousand) only with the District Legal Service Authority, Sonitpur, Tezpur. The District Legal Services Authority, on receipt of the said money, shall make an enquiry to ascertain as to whether, there is dependent (s), who

suffered loss and injury as a result of death of the deceased and also if such dependent(s) or legal representative(s) need any rehabilitation. Upon such enquiry, if it is found that the dependent(s), if any, need rehabilitation, then the District Legal Services Authority shall initially release the said interim amount and thereafter direct payment of adequate compensation, as may be prescribed by the scheme to be prepared by the State Government. It is made clear that if the District legal Services Authority, after due enquiry, arrive at the findings that there is no dependent(s) or that the dependent(s) of the deceased/victim does not require any rehabilitation, then the District Legal Services Authority, shall refund the said amount of Rs.50,000/-, without delay, in favour of the State Government.

18. Before parting with the case, we must record our appreciation of assistance rendered by Mr. Rafiqul Islam as Amicus Curie and we direct the payment of Rs. 5,000/- as fee to him. The appeal is accordingly dismissed.