
(2005) 02 GAU CK 0027

Gauhati High Court

Case No: None

Naresh Bhuyan

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Feb. 15, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 27
- Penal Code, 1860 (IPC) - Section 302

Citation: (2007) 1 GLR 804 : (2005) 3 GLT 320

Hon'ble Judges: P.G. Agarwal, J; Anima Hazarika, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

A. Hazarika, J.

This appeal has been preferred by the appellant from jail challenging the judgment and order dated 14.12.2000 passed by the learned Sessions Judge, Golaghat in Sessions Case No. 75/2000 convicting the appellant u/s 302, India Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs. 100 in default, further rigorous imprisonment for one month. The facts leading to this appeal are as follows -

2. The written ejahar was lodged by one Shri Ramen Bhuyan, son of late Ramrupa Bhuyan, Badulipara, Raunakhati Nepali Basti, Rangamati to the Officer-in-Charge, Dergaon Police Station contending that on 13.12.1994 the accused Naresh Bhuyan, son of Kartick Bhuyan of the same village has killed his father by hacking him in the head with an axe, while he was sleeping alone inside the house and requested the police to take appropriate action in the matter.

3. Before the police swung into action, the accused surrendered himself at the Golaghat Police Station and accordingly he was brought to the Dergaon Police

Station and registered a case being Dergaon P.S. Case No. 163/94 u/s 302, I.P.C., which is equivalent to G.R. Case No. 1196/94.

4. Thereafter the police investigated the matter, made inquest on the body of the deceased, recorded the statement of the witnesses and seized the articles used in the murder and charge sheet was submitted u/s 302 I.P.C. The case being triable exclusively by the Court of Sessions Judge, Golaghat, the case was committed to the Court of Sessions, Golaghat by the Judicial Magistrate on 13.6.2000.

5. On receipt of the case record the learned Sessions Judge, Golaghat vide order dated 7.7.2000 framed charge u/s 302, I.P.C. against the accused and read over to him to which he pleaded not guilty and stand for trial.

6. During the trial, the prosecution has examined all together 5(five) witnesses including the Doctor and the Investigating Officer. Admittedly there is no eye witness to the occurrence and the case rests on circumstantial evidence and extra-judicial confession.

7. While deposing before the Court, P.W.1 stated that the accused is his nephew and the deceased is his Bardeuta (father's elder brother). He came to know on the next day of the occurrence that Ramrup had died. He went to the house of the deceased and he met the accused on the way. The accused was coming to Golaghat Police Station. On being asked the accused told him that he will go to Golaghat Police Station and he has come here-after killing his Barpita with an axe. The witness took the accused to Golaghat Police Station and handed over, him to the police. In the cross-examination the suggestion put to him has been denied.

8. P.W.2 is the doctor who has made the autopsy on the dead body and has found the following injury, viz.;

(a) One incised wound over the occipital region of the head of size - 2 " x 1/2" x bone depth underlying occipital bone is fractured.

(b) One incised wound over the left parital region of the head of size - 2 1/2" x 1/2: x bone depth. On further dissection, underlying left parital bone is fractured.

(c) One incised wound over the left ear of size - 1/2" x 1/2". All the wounds are covered with, closed blood.

(d) Vertebrae - Healthy.

(e) Membrane - Lacerated under injury Nos. 1 and 2 clotted blood present.

(f) Brain - Lacerated of the left parital and occipital bone clotted blood present.

(g) Spinal cord - Healthy cranial cavity contains blood.

(h) Abdomen - Stomach healthy and contains partly and semi-digested food and water.

(i) The injuries are anti-mortem in nature.

In his opinion death was due to shock and hemorrhage as a result of the injuries sustained by the deceased.

He has proved the Post Mortem report vide Ext-1, Ext 1(1) and Ext 1(2) are the signature of Superintendent and joint Director of Health services, Golaghat.

9. P.W.3 is the son of the deceased. His evidence is hearsay and cannot be relied upon in proving the guilt of the accused. P.W.4 is the wife of the deceased, who could not say anything about the occurrence except the death of her husband. P.W.5 is the Investigating Officer who deposed as follows -

On 9.12.1994 I was serving as Sub-Inspector of Police at Dergaon Police Station. That day about 1.30 P.M. Shri Ramen Bhuyan, son of late Ramrupa Bhuyan lodged a written ejahar with the P.S. that the accused Naresh Bhuyan had killed his father by hacking him with an axe. Officer-in-charge Nurul Islam registered a case and vested with the charge of Investigation on me. Ext. 2 is the ejahar, Ext. 2(2), 2(3) OC's endorsement.

I recorded statements of Witnesses next day, i.e., on 15.12.1994. He the accused from Golaghat Police Station. The accused confessed his guilt before me and said that he would produce the axe used in the occurrence.

Ext-3 is the statements made by the accused, Ext. 3(1) is my signature.

Accordingly the accused took me to, the place of occurrence on that day, that is on 15.12.1994. He produced the axe used in the occurrence from inside of his own house. I seized it. Ext. 4 is the seizure list. Ext. 4(1) is my signature. Ext. 4(2) is accused persons signature which he put before me. M. Ext. 1 is the said seized axe.

In his statement the accused confessed that he had committed murder in the glow of a open lamp. The accused produced that very lamp from the house of the deceased. I seized it. Ext. 5 is the seizure list. Ext. 5(1) is my signature. Ext. 5(2) is accused persons signature.

M. Ext.2 is the said seized lamp which is made of tin.

I recorded statement of all witnesses. I forwarded the accused to the Courts along with a prayer for recording his confessional statement....

10. The accused was examined u/s 313 of the Code of Criminal Procedure. The accused retracted from the earlier statement relating to extra-judicial confession, but admitted that he has appeared at the police Station. Simultaneously he has admitted that in the material exhibits he has signed the same.

11. We have heard the arguments advanced by the amicus curiae Shri K.K. Gupta and the public prosecutor representing the State of Assam. We have perused the relevant records and the reasons and decisions of the appeal are summarised as

hereunder -

12. The extra-judicial confession made by the accused to P.W. 1 and subsequently retracted whether would be safe to convict the accused without any corroborative evidence and whether the recovery and seizure of articles made in pursuance of statement of accused can be the sole basis of conviction.

13. In order to determine the facts stated herein-above, it is pertinent to note that, the prosecution has examined the Doctor P.W.2 who made the autopsy on the dead body of the deceased and found 6 injuries on the body of the deceased and in his opinion the death was due to shock and haemorrhage as a result of the injuries sustained by the deceased. The extra-judicial confession made before P.W.1 cannot be presumed to be tainted. Non-retracted confession is a rarity in criminal cases. To retract from confession is the right of the accused and all the accused against whom confessions were produced by the prosecution have invariably adopted that right. It would be injudicious to jettison a confession on the mere premise that its maker has retracted from it. The Court has a duty to evaluate the evidence concerning the extra-judicial confession by looking at all aspects. Admittedly the extra-judicial confession was made to P.W. 1 who had accompanied him to the Police Station and surrendered himself after the occurrence and in the deposition of P.W. 1, the prosecution has established the said facts that the accused had killed the deceased with an axe and, therefore, this Court after evaluating the evidence on record and the chain of circumstances established the guilt of the accused beyond all reasonable doubt, more so, when he volunteered himself of his own to surrender before the Police Station.

14. The next question that arises relating to the discoveries of the articles used in the incidence. The accused himself lead to the discovery of axe used in the commission of crime. The said articles were seized in presence of two independent witnesses as required u/s 27 of the Evidence Act. The circumstances relating to the recovery of axe from the house of the accused is a formidable one. When P.W.5 asked about the weapon used in the crime, the accused went to his residence and brought the axe from his residence and thereafter the accused went to the residence of deceased and brought the lamp and handed over the I.O. Therefore, the acts of the Police Officer who has examined himself as P.W.5 cannot be presumed to be untrustworthy; when a Police Officer gives evidence in Court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct, if it is not otherwise shown to be unreliable. It is for the accused through cross examination of witnesses or through any other materials to show the evidence of Police Office, is, either unreliable or at least unsafe to be acted upon. But it is not & legally approvable procedure to presume the police action as unreliable, when the accused failed to cross examine the I.O. on the, material points brought against the accused.

15. In the instant case when P.W.5 deposed before the court that the axe was recovered pursuant to the statement of the accused, is not a sufficient, ground to discard the, evidence u/s 27 of the evidence Act.

16. Thus, on consideration of the entire evidence of the record in this case we have no doubt the Session Court had come to the correct conclusion that the accused was the man who killed the deceased and the prosecution has established the guilt of the accused beyond all reasonable doubt.

17. In the result the appeal under challenge is dismissed, thereby upholding the judgment and order dated 14.12.2000 passed in Session case No. 75/2000 by the learned Sessions Judge, Golaghat, convicting the appellant u/s 302, I.P.C. and sentencing him to suffer imprisonment for life and to pay fine of Rs. 100 in default, further rigorous imprisonment for one month.