

(2012) 02 GAU CK 0059

Gauhati High Court

Case No: Criminal Appeal No. 52 (J) of 2007

Bhabani Gogoi

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Feb. 17, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 300, 302, 341

Citation: (2012) 3 GLT 292**Hon'ble Judges:** Adarsh Kumar Goel, C.J; C.R. Sharma, J**Bench:** Division Bench**Advocate:** Sanjoy Kr. Medhi-II, Amicus Curiae, for the Appellant; D. Das, Addl. PP, for the Respondent**Final Decision:** Dismissed

Judgement

C.R. Sarma, J.

This appeal is directed against the judgment and order dated 2.1.2007, passed by the learned Sessions Judge, Dibrugarh, in Sessions Case No. 110/2004. By the impugned judgment and order, the learned Sessions Judge convicted the appellant u/s. 302 IPC and sentenced him to suffer imprisonment for life and pay fine of Rs. 5,000/-, in default suffer rigorous imprisonment for another period of 2 (two) months. Aggrieved by the said conviction and sentence, the convicted person, as appellant, has come up with this appeal. We have heard Mr. Sanjoy Kr. Medhi, learned Amicus Curiae and Mr. D. Das, learned Addl. P.P., Assam, appearing for the State respondent.

2. The prosecution case, in brief, is that on 14.5.2003 at about 11-30 p.m. when Sri Mantu Chetia, hereinafter called the deceased, was returning home with Mr. Jitu Tapan Konwar, (PW-1) and Mr. Ramen Phukan, (PW-3). Sri Bhabani Gogoi i.e. the appellant intercepted the deceased on the road, and hacked him to death with a

dao. Though the deceased was shifted to the hospital, he succumbed to the injuries on way to the hospital.

Sri Pabitra Phukan, the brother of the deceased lodged the FIR with the police on 15.05.2003. On receipt of the said FIR, police registered a case u/s 341/302 IPC and launched investigation into the matter.

3. During investigation police visited the place of occurrence, prepared inquest report (Ext-5) to the dead body of the deceased, sent the dead body for post mortem examination, examined the witnesses and arrested the appellant. Police also seized a meat dao vide Ext. 3(4) on being shown by the appellant.

4. At the close of the investigation police filed charge-sheet u/s 341/302 IPC.

The offence being exclusively triable by the Sessions Court, the case was committed and the learned Sessions Judge framed charges u/s 341 and 302 IPC. The charges were read over and explained to the appellant, to which he pleaded not guilty. The appellant claimed to be tried.

The prosecution examined as many as 10 witnesses including the medical officer (PW-4), who conducted the autopsy and the Investigating Police Officer (PW-10). At the close of the evidence for the prosecution, the accused person i.e. the appellant was examined u/s 313 Cr.P.C. He denied the allegations, brought against him. No defence evidence has been adduced on his behalf.

Considering the evidence, on record, the learned Sessions Judge held the appellant guilty of the offence u/s 302 IPC and accordingly convicted and sentenced as indicated above.

5. The learned Amicus Curiae, appearing for the appellant, has submitted that there is no sufficient evidence against the appellant and that there is no corroboration in the evidence of PW-3, who claimed to be an eye witness. In view of the above, it is submitted that the learned Sessions Judge committed error by convicting and sentencing the appellant u/s. 302 IPC.

The learned Addl. P.P., supporting the impugned conviction and sentence submitted that there is enough substantive evidence, including the evidence of the eye witness (PW-3), against the appellant and that the learned Trial Judge rightly convicted and sentenced the appellant, requiring no interference by this Court, in this appeal.

For appreciating the counter arguments, advanced by the learned counsel, appearing for both the parties and to examine the correctness of the impugned judgment and order, we feel it, appropriate to, briefly, scan the evidence, on record.

6. It appears from the FIR that the deceased, at the time of occurrence, was returning home along with PW-1 and PW-2. Therefore, as claimed by the prosecution, both PW-1 and PW-3 were eye witnesses to the occurrence. Sri Jitu Tapan Konwar (PW-1) declined to support the prosecution version regarding

involvement of the appellant. In his evidence, given as PW-1, this witness stated that, when he returning home, along with Sri Ramen phukan, (PW-3), after attending the Santi Biya (a form of marriage) in the house of Sri Joy Phukan, they found the deceased near the Tiniali (i.e. tri juncture of roads) in injured condition lying unconscious. He further stated that they had informed Sri Subhas Chetia i.e. the elder brother of the deceased, who took the deceased to hospital, where he succumbed to his injuries. This witness was cross-examined, after declaring hostile, by the prosecution. Though this witness was cross-examined by the prosecution, no incriminating evidence, against the appellant, could be elicited. However, from his evidence, it is found that he, along with PW-3, found the deceased in injured condition, on the road and the deceased succumbed to the injuries.

7. Sri Pabitra Chetia, the brother of the deceased deposing as PW-2, stated that he, along with the deceased, attended the marriage ceremony, in the house of Sri Joy Phukan and the deceased had left the place along with Sri Ramen Phukan, (PW-3) and Sri Jitu Tapan Konwar, (PW-1) leaving him behind. He further stated that Sri Ramen Phukan and Sri Jitu Tapan Konwar returned to the marriage venue and informed that Bhabani Gogoi i.e. the appellant had cut the deceased. According to this witness, on being so informed, he rush to the place of occurrence and found the deceased on the road. He further stated that the deceased had told him that the appellant had cut him. He has exhibited the FIR, lodged by him, as Ext. 1 and his signature thereon, as Ext. 1(1). Though this witness was cross-examined, on behalf of the defence, no material contradiction could be elicited to demolish his said evidence. From his cross-examination, made by the defence nothing could be elicited to show that this witness had any grudge or adverse interest to falsely implicate the appellant.

In the FIR, which was lodged, immediately after the occurrence, this witness, as informant, had stated that both PW-1 and PW-3 had informed him that the appellant had cut the deceased with a dao. Therefore, we find sufficient corroboration in the statement made in the FIR as well as in the oral evidence, given by the PW-2, regarding the information given to him by the PW-1 and PW-3. In the absence of anything contrary, we find no reason to disbelieve the evidence given by PW-2.

8. Shri Ramen Phukan, who was an eye witness to the occurrence, deposed as PW-3. Supporting the prosecution version, this witness stated that, when he was returning home, after attending the marriage ceremony held in the house of Sri Joy Phukan, along with the deceased and Sri Jitu Tapan Konwar, PW-1, the appellant had inflicted blows with a dao, on the head of the deceased. Corroborating the evidence of PW-2, this witness stated that they had informed the PW-2, about the incident and that the deceased died on his way to the hospital. This witness was also duly cross-examined on behalf of the defence. He categorically stated that he, along with PW-1, was returning home and saw the incident. From his cross-examination, no material contradiction or discrepancy, could be elicited to demolish his evidence. There is

nothing, on record, to show that this witness had any adverse interest against the appellant to falsely implicate him. Therefore, we find no reason to disbelieve him and hold that he had falsely implicated the appellant, leaving the actual culprit.

9. From the evidence of PW-1 and PW-3, it is clearly found that both of them were returning home, after attending the marriage in Joy Phukan's house. From the above, it transpires that on the date of occurrence a marriage ceremony was held in the house of Joy Phukan and PW-1, PW-2 and the deceased had attended the said marriage. The said circumstance makes it believable that they had returned home together and the occurrence took place when they were on the road. The refusal of PW-1, to support the prosecution version, regarding involvement of the appellant, who was a co-villager, cannot be sufficient ground to negate the forceful evidence given by the PW-3. Therefore, in the absence of any contradiction or discrepancy, we find no difficulty in accepting the evidence, given by the PW-3.

From the evidence as discussed above, it has been clearly established that the deceased died on the fateful night due to the injuries sustained by him at the hands of the appellant.

10. PW-4 is the medical officer, who performed the autopsy on the dead body of the deceased. The medical officer found the following injuries in respect of the dead body of the deceased. The said medical officer opined that the deceased died due to the injuries sustained on his head and that the injuries were anti-mortem, caused by heavy sharp cutting weapon and homicidal in nature. The doctor found the following injuries:

1. An incised wound over the lower 3rd of the left leg measuring 11 x 4 cms and cutting the tibias.
- 2 An incised wound over the lower 3rd of the left leg measuring 10 x 3 cms and muscle deep.
- 3 An incised wound over the dorsum of the left hand measuring 3 x 1 cms muscle deep.
- 4 An incised wound over the lower 3rd of the left arm in the back measuring 6 x 5 cms and muscle deep.
- 5 A linear abrasion below the left scapula measuring 9 x 0.5 cms.
- 6 An incised wound over the left cheek measuring 6 x 2 cms and cutting the mandible.
- 7 An incised wound over the left forehead measuring 8 x 2 cms and cutting bone.
- 8 An incised wound over the outer canthus of the left eye and forehead measuring 13 x 3 cms and cutting bone.

9 An incised wound over the left side of the head including the left ear measuring 22 x 4 cms and cutting bone and brain.

10. An incised wound over the left occipital region measuring 17 x 4 cms and cutting the brain.

11. From the above medical evidence, it is found that the deceased sustained multiple injuries on various parts of his body including the head and he died due to the injury sustained on the head. The PW-3, who claims to be the eye witness to the occurrence stated that the appellant had inflicted dao blow on the head of the deceased and his evidence has remained un-demolished. Therefore, we find sufficient corroboration in the oral evidence, given by the PW-3 and the medical evidence, given by PW-4 to believe that the deceased sustained injuries on the head. The evidence given by the PW-3, regarding inflicting of the injuries with a dao has been corroborated by the medical evidence, which reveals that the injuries were caused by a sharp cutting weapon i.e. a dao.

From the evidence of PW-3 it has been established that the appellant had caused the said injuries. The multiple injuries sustained by the deceased, more particularly on the head, which is a vital part, at the hands of the appellant, indicates that the appellant had the intention to cause the death of the deceased.

12. PW-5, who was a witness to the inquest report, prepared by the investigating officer, did not see the occurrence. Shri Puniswar Gogoi, who is the father of the appellant, deposing as PW-6, stated that his son was arrested by Police. He being the father of the appellant, his failure to support prosecution version is not surprising. This witness was also declared hostile by the prosecution. Of course, no incriminating evidence could be elicited from his cross-examination.

There is no substantive evidence to show that the dao was recovered/seized at the instance of the appellant. The Investigating officer stated that Bhabni Gogoi, at the time of assaulting the deceased used the said dao. Sri Puneswar Gogoi, (PW-6), father of the appellant stated that he did not know where from the Investigating Officer had collected the dao.

13. Sri Joy Phukan, who deposed as PW-7, is the uncle of the appellant. He did not whisper anything incriminating against the appellant. His refusal to say anything against the appellant, in view of his close relationship with the appellant, is not surprising. Sri Bijay Gogoi, who deposed as PW-8 also did not state anything against the appellant. According to PW-7 and PW-8 aforesaid police took their signatures on ext. 3 i.e. the seizure list by which the police seized the dao. They did not state anything indicating that the dao was seized in their presence.

In view of the above, the evidence, given by PW-5, PW-6, PW-7 and PW-8, does not have substance, inasmuch as, they declined to support the prosecution version.

14. Sri Cheni Ram Das, PW-9 and Sri Tupidhar Gogoi were investigating police officers. The investigation was done by PW-10 and after his retirement the case diary was handed over to the PW-9, who, after completing the investigation, submitted the charge-sheet (Ext.-4). PW-10, in his evidence, stated that the inquest was conducted by circle officer, namely, Mr. N. Dutta. He has exhibited the inquest report as ext. 5. He also stated that, on being shown by the appellant, a meat dao (a sharp cutting weapon) was seized by him vide ext. 3. He has also exhibited the said dao as material ext. No. 1. In his cross examination this witness denied the suggestion that the said dao was brought by him from the house of the appellant and that the said dao did not belong to the appellant. He also denied the suggestion that he obtained the signatures of the witness on Ext. 3, which was on blank paper.

None of the seizure list witnesses i.e. the PW-7 and PW-8 supported the prosecution version that the seized dao was recovered at the instance of the appellant.

In view of the forceful evidence given by PW-3, who was an eye witness to the occurrence, the failure of the prosecution to prove the seizure of the incriminating weapon is not fatal for the prosecution, inasmuch as, the PW-3 forcefully stated that the appellant had assaulted the deceased causing his death.

15. The medical evidence and the evidence given by the PW-3 clearly indicate that the weapon used by the appellant was a sharp cutting weapon. This medical opinion supports the PW-3 's evidence that the appellant had inflicted the injuries with a meat dao i.e. sharp cutting weapon. It has been noticed that no material contradiction or discrepancy could be elicited, in respect of the PW-3 aforesaid, from the cross-examination of the investigating officer.

16. From the above discussed evidence, it is found that the said injuries were caused, by the appellant. There is nothing on record to show that the appellant was either provoked or compelled to assault the deceased under any compelling circumstances.

17. The facts and circumstances of this case, as revealed from the evidence of prosecution witnesses, more particularly the PW-3, do not indicate that the act committed by the appellant, falls under any one of the exceptions, mentioned in Section 300 IPC. Admittedly, as revealed from the evidence, given by the prosecution witnesses, more particularly the medical evidence of PW-4, the death of the deceased was the result of culpable homicide and PW-3 forcefully stated that the assault was caused by the appellant.

18. The multiple injuries (ten in number), which are found to be repeatedly inflicted on various parts of the body, including the head, cutting brain part, clearly indicate that the assailant had inflicted the injuries with an intention to kill the deceased. There is no difficulty in understanding that multiple injuries, caused by a sharp cutting weapon, more particularly on the head, that too inuring the brain part, is likely to cause death of a person.

Therefore, we have no hesitation in concluding that the appellant had inflicted the blows with an intention to kill the deceased or with the knowledge that the injuries, inflicted by him, were likely to cause death. In view of the above, it is found that the appellant committed the offence u/s. 302 IPC i.e. the murder of the deceased. Therefore, in our considered opinion, the learned Sessions Judge committed no error by convicting and sentencing the appellant u/s 302 IPC.

We find no merit in this appeal requiring interference.

Accordingly the impugned conviction and sentence are upheld.

The appeal stands dismissed.

Return the LCR.

Before we part with this record, we acknowledge with appreciation, the assistance rendered by Sri S. Medhi as Amicus Curiae and direct that he be paid an amount of Rs. 5,000/- (Rupees five thousand) only, as his remuneration, by the Assam State Legal Services Authority.