
Shri Ramsingh Rajput Vs The State of Assam

Criminal Appeal (J) No 13 of 2006

Court: Gauhati High Court

Date of Decision: April 29, 2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) & Section 313#Penal Code, 1860 (IPC) & Section 302

Citation: (2011) 4 GLR 812 : (2011) 4 GLT 123

Hon'ble Judges: Amitava Roy, J; A.K. Goswami, J

Bench: Division Bench

Advocate: G. Lal, Amicus Curiae, for the Appellant; Z. Kamar, Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

A.K. Goswami, J.

This appeal is directed against the judgment dated 23.12.2005, passed by the learned Sessions Judge, Tinsukia, in

Sessions Case No. 108(T)/2005, convicting the accused Appellant u/s 302 IPC and sentencing him to suffer imprisonment for life and to pay a

fine of Rs. .1,000.00, in default of payment of fine, to undergo rigorous imprisonment for 2 months.

2. The prosecution case, in a nutshell, is that on 13.7.2000, one Munshi Rajput, lodged an ejahar at about 12:30 PM before the Officer-in-

Charge, Tinsukia Police Station, stating that on the night of 12.7.2000, while he was doing night duty in the factory of Nokhroy Tea Estate, some

miscreants killed his son, Sri Ram Nath Rajput, who was guarding his house, by hacking him with a dao in the neck and he was informed about it

at 11:00 PM by his elder brother, Sri Sahroi Rajput and his another son, Ramsingh Rajput, both of Khelmati line of Nokhroy Tea Estate. On his

coming home, he found Ram Nath lying with cut injuries in the neck. On the basis of the said ejahar, Tinsukia Police Station Case No 257/2000

u/s 302 IPC was registered.

3. In a twist of tale, the police, during the course of investigation, found enough materials against Sri Ramsingh Rajput, who is the eldest son of the

informant and who had also informed his father about the killing of his brother, Sri Ram Nath Rajput, as the assailant and accordingly, submitted

charge sheet against the present Appellant u/s 302 IPC. The case being triable by a Court of Sessions, the learned Magistrate committed the case

to the Court of the learned Sessions Judge, Tinsukia, whereupon Sessions Case No 108(T)/2004 was registered.

4. The learned Sessions Judge framed charge u/s 302 IPC against the accused and that being read over to him, the accused pleaded not guilty and

claimed to be tried. During the trial, the prosecution examined 5 witnesses including the doctor who had conducted the post mortem examination

as PW-4 and the Investigating Officer who submitted the charge sheet as PW-5. The defence did not adduce any evidence.

5. The statement of the accused was recorded u/s 313 CrPC. The learned trial Court, on consideration of the materials on records, came to the

conclusion that the prosecution had been able to establish the guilt of the accused beyond reasonable doubt and accordingly, convicted and

sentenced the accused as noted hereinabove.

6. We have heard Dr G Lal, learned Amicus Curiae, for the accused and Mr Z Kamar, learned Public Prosecutor, Assam, for the Respondent.

7. In order to appreciate the contentions advanced by the learned Counsel for the parties, it would be essential to discuss the evidence on record

as brought forth through the deposition of the prosecution witnesses.

8. PW- 1 is the father of both the deceased and the accused Appellant. It appears that PW-1 is known both as Manshuk Rajput and Munshi

Rajput. According to him, both the deceased and the accused Appellant were staying together in the same house and he was living separately at a

distance of about 100 yards from their residence. While the accused was living with his wife and children, the deceased was a bachelor. It is his

version that the incident had taken place at about 6:00 PM at the house of the accused. He was informed by his elder brother, Shri Sahroi Rajput,

at about 9:00 PM that some one had killed his son Ram Nath Rajput and on receipt of that information, he went to the place of occurrence and

found that Ram Nath was lying dead with 2 cut injuries - one on the neck and the other on the cheek. After informing the garden Manager, he

lodged the ejahar, written by the village Gaonburah at his instance. In his deposition, he stated that he had met the accused in the garden hospital

and on enquiries being made by him, the Appellant had told him that he had committed the crime in the midst of quarrel and getting this information,

he had handed over his son to the police. However, in his cross-examination, he admitted that he had not informed the Investigating Officer that the

accused had confessed before him that he had committed the offence.

9. PW- 2 is a co-villager and a resident of Nokhroy Tea Estate. According to him, both the accused and the deceased were living in the same

house. He did not have any knowledge as to who had killed Ram Nath and there was no cross-examination of this witness.

10. PW- 3 had also deposed to the effect that both the accused and the deceased were living together and that they were his neighbours. It has

come out in his evidence that the accused led the police officer to the jungle area and brought out an axe with a long bamboo handle. He proved

the said axe as Material Ext- 1. He had proved the seizure list by which the axe was seized as Ext- 2. He also did not have any knowledge as to

who had killed Ram Nath and why. In cross-examination, however, he stated that the axe was not recovered at the instance of the accused

Appellant.

11. PW- 4 is the doctor who had conducted the post mortem examination and he found the following injuries in the person of the deceased:

(i) An incised wound over the left cheek, measuring 7 x 2.5 cm and cutting the lower border of the mandible.

(ii) An incised wound over the middle of the neck, measuring 4 x 1 cm and cutting the trachea.

(iii) An incised wound over the lower neck measuring 4 x 1 cm and skin deep.

According to him, the death was caused due to shock and hemorrhage as a result of the injuries sustained, which have been inflicted by a heavy

sharp cutting weapon. According to him, injury nos 2 and 3 were vital in nature and these injuries could cause death of a person individually and

that these injuries could be caused by an axe.

12. PW- 5 is the Investigating Officer who had conducted investigation. However, he could not submit the charge sheet, which was submitted by

his reliever, Shri Ratul Gogoi, on 9.6.2002 as he had been transferred in the meantime. He had proved the ejahar as Ext- 4 and also the inquest

report as Ext- 5 where the accused also signed as a witness. He prepared one sketch map of the place of occurrence, which was exhibited as Ext-

6. He stated that getting some confidential information, he brought the accused to the police station for interrogation and on such interrogation, the

accused confessed before him that he had committed the murder of his brother by assaulting with an axe, which was subsequently thrown in the

jungle and the accused promised to lead the police for recovery of the same. It is his version that the axe was recovered from a nearby jungle at

the instance of the accused and thereafter, the same was seized vide Ext1. He had recorded the statement of the accused leading to the recovery

of the weapon and the same was proved as Ext- 7. PW- 5 also confirmed in cross-examination that PW- 1 did not tell him that the accused had

killed his brother. He also conceded to a question put by the Court that he did not take any step by way of making a prayer for recording

confessional statement of the accused. He also acknowledged that the axe seized vide Ext- 1 was not sent to Forensic Laboratory for examination.

13. The accused in his statement u/s 313 CrPC, had categorically stated that while he was living in the garden quarter, his brother was living

separately in the village out side the garden area and that the murder was committed in the house of the deceased situated at village area. He

further stated that axe, dao and spade kept in the ""Basti house""(village house) had been thrown away in the jungle and due to beating of the police,

he had confessed his guilt and led the police officer to the jungle wherefrom the axe was recovered. It is also his assertion that he was in the garden

hospital for about 4/5 days prior to the incident due to stomach and body pain and he was informed about the murder by Shri Sahroi Rajput at

about 9:00 PM.

14. Dr Lal, learned Amicus Curiae, appearing for the accused Appellant, has submitted that the evidence on record would belie the fact that the

accused and the deceased were living together. He has drawn our attention to the charge sheet, Ext- 8. Learned Amicus Curiae submits that it has

been specifically stated therein that the accused is a resident of Khelmati line of Nokhroy Tea Estate. The sketch map, Ext- 6, would also indicate

that the occurrence had taken place by the side of Nokhroy Gaon road and there is no reference to any tea estate in the said sketch map of the

place of occurrence. Contrary to what has been stated by PW- 1 that the incident had taken place in the house of the accused, PW- 5 in his

deposition had categorically stated that the dead body was lying inside the house of the informant. The learned Amicus Curiae submits that this

grave discrepancy, there being no eye witness to the occurrence, cuts at the very root of the prosecution case. According to him, the statement of

the accused u/s 313 Code of Criminal Procedure that he was in the garden hospital, finds corroboration in the statement of PW- 1 to the effect

that PW- 1 had met the accused in the garden hospital. He urged that the alleged extra judicial confession made by the accused before the father is

not at all reliable and cannot form the basis of his conviction u/s 302 IPC. Adverting to the confession before the PW- 5, the learned Amicus

Curiae submits that the same is not admissible in evidence and, therefore, such alleged confession made before PW- 5 is of no consequence. While

conceding that the accused had indicated in his statement u/s 313 Code of Criminal Procedure that he had thrown way axe, dao and spade in the

jungle, it is submitted that the same is not sufficient to bring home the charge u/s 302 IPC against the accused Appellant. With regard to the alleged

recovery of the axe, seized vide Ext- 1 and the disclosure statement made before PW- 5, which was exhibited as Ext- 7, it has been contended by

the learned Amicus Curiae that the statement by the accused to the effect that he would be able to show the place where he had thrown the axe

that he had used in the incident, was as a result of beating of the police and, therefore, not voluntary. He also argues that even if an axe had been

seized on being shown by the accused Appellant, it is the bounden duty of the prosecution to prove that the said axe was the weapon of assault

and was, in fact, used in the commission of the crime. No such evidence has been brought on record by the prosecution to establish by way of

forensic examination that the axe, Material Ext- 1, was indeed the weapon of offence. The learned amicus Curiae concluded his argument by

submitting that there is no material conclusively determining the guilt of the accused and that it would be unsafe to convict the accused on the basis

of materials on record and, therefore, the accused is liable to be acquitted giving him the benefit of doubt.

15. Countering the submissions of the learned Amicus Curiae, Mr Z Kamar, learned Public Prosecutor, Assam, supports the impugned conviction

and sentence imposed upon the accused and submits that the conduct of the accused in throwing away axe, dao and spade from the house reveals

in no unmistakable term the guilty mind of the accused Appellant. He contends that Ext- 7 forms the basis supported by the evidence of PW- 5 as

well as PW- 3 that the accused led the police to the place where he had thrown the axe and accordingly, the same was recovered. It is also his

submission that there is no reason as to why the extra judicial confession made by the accused to his father PW- 1 should be disbelieved.

According to him, the aforesaid circumstances cumulatively point to the guilt of the accused Appellant beyond reasonable doubt and, therefore,

there is no merit in this appeal and the conviction and sentence passed by the learned trial Court should be upheld.

16. We have considered the submissions made by the learned Counsel for the parties and also have perused the evidence on record. It is

noticeable that in the Ext- 4, ejahar, PW- 1 had stated that his son, i.e, the Appellant along with his brother Sahroi Rajput had informed about the

killing of his other son. However, significantly in his deposition, he restricted himself in saying that he was informed about the incident by his elder

brother Sahroi Rajput alone. Whether the deceased and the accused were living together or not, may not be very material but where the incident

had occurred is certainly very material and significant. PW- 5 was categorical in stating that the dead body was found in the house of the informant.

The sketch map, Ext- 6, also is a pointer to the fact that the occurrence had taken place not in the tea estate, where the accused was residing, but

in Nokhroy village. Surprisingly, PW- 1 had shifted the place of occurrence to the house of the accused Appellant. This vital contradiction is

significant in view of the fact that the conviction is rested on the basis of circumstantial evidence. What is striking is also the fact though PW- 1 had

deposed about the extra judicial confession made by the accused before him, he had not stated about the said extra judicial confession during the

course of investigation. Therefore, the extra judicial confession has to be excluded from the purview of consideration in determining as to whether

the accused is guilty of committing murder of his brother. The so-called confession made by the accused before PW- 5 would not detain us any

longer, inasmuch as, such confession is not admissible in evidence.

17. With regard to alleged recovery of the weapon, i.e, the axe (Material Ext- 1), it is the own statement of the accused that he had thrown many

implements such as dao, axe and spade after the incident. The conduct of the accused is unusual and may point a needle of suspicion towards him.

The Apex Court, in Palvinder Kaur Vs. The State of Punjab (Rup Singh-Caveator), , had pointed out that cases are not unknown where death is

accidental and the accused has acted in a peculiar manner regarding the disposal of the dead body for reasons best known to himself. One of them

might well be that he was afraid of a false case being lodged against him. The peculiar manner regarding disposal of the implements such as dao,

axe etc. for the reasons best known to the Appellant, would not necessarily, in absence of any other acceptable material on record, point towards

his guilt beyond reasonable doubt that it was he who had committed the murder of Ram Nath. Suspicion cannot take the place of proof. Life and

liberty of persons cannot be put in jeopardy only on the basis of suspicion, however strong, and a person can be deprived of his invaluable right of

personal liberty only on the basis of proof beyond reasonable doubt. PW- 5 did not take any step whatsoever to record the confessional statement

of the accused and remained satisfied with the alleged confession made before him. The accused had categorically stated that he had made the

alleged confession due to beating by the police. In the aforesaid circumstances, the recovery of the axe, which admittedly, was thrown by the

accused Appellant, would not amount to recovery of the axe used as weapon of assault. The prosecution ought to have brought on record

unimpeachable evidence suggesting that there can be no two opinion that the axe recovered was, in fact, the weapon used in the offence.

18. On overall appreciation of materials on record, we do not find it safe to convict the accused of the charge u/s 302 IPC and we are of the

opinion that in the given facts and circumstances of the case, the accused is entitled to benefit of doubt.

19. In the circumstances, we set aside the judgment dated 23.12.2005, passed by the learned Sessions Judge, Tinsukia, in Sessions Case No.

108(T)/2005, convicting and sentencing the accused u/s 302 IPC and the accused is set at liberty forthwith.

20. For the assistance rendered as Amicus Curiae, the State of Assam will remunerate Dr G. Lal to the extent of Rs. 5,000.00.

21. Send back the LCRs.