

(1996) 03 GAU CK 0013

Gauhati High Court

Case No: Criminal Appeal No. 130 (J) of 1993

Dharma Kanta Karmakar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: March 28, 1996**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 8
- Penal Code, 1860 (IPC) - Section 302

Citation: (1999) 3 GLR 19**Hon'ble Judges:** V.D. Gyani, J; Sujit Barman Roy, J**Bench:** Division Bench**Advocate:** N. Choudhury, Amicus Curiae, for the Appellant; D. Goswami, PP, for the Respondent**Final Decision:** Dismissed

Judgement

V.D. Gyani, J.

This appeal is directed against the judgment and order dated 19.6.1993 delivered by the Additional Sessions Judge, Dibrugarh in Sessions Case No. 12(D)88 thereby holding the Appellant guilty of offence punishable u/s 302 IPC and sentencing him to undergo imprisonment for life.

2. Prosecution case stated in brief was that the Appellant, a labour in Nadua Tea Estate lived with his wife Defendant Parbati Karmakar in Kacharia Lane of the said Tea Estate, On the date of incident, i.e., 3rd August, 1987 around 6/7 a.m. the Tea Garden Chowkidar, Chainu Nayak (P.W. 1) was informed that some incident had taken place at the house of the accused. Seeing the door of the Appellant's house shut, he approached the Tea Garden Manager who in turn asked him (Chowkidar) to open the door with the help of police. Accordingly, he proceeded to the police outpost and lodged a report (Ext-I) and the incident was entered into in the General

Diary. Police accompanied him to the Appellant's house and the accused was ordered to open the door by the police, but he declined. Ultimately he was threatened with the gun. It was on this threat being held that the accused opened the door. A ghastly scene presented itself, his wife was lying in a pool of blood with incised wounds, two kids, i.e., Appellant's sons were also inside the house. It is apparent that the accused handed over a blood stained dao to the police which was seized as material Ext-I. An inquest was also Held and the accused was arrested. Witnesses were examined and the dead body was sent for post-mortem examination, On completion of investigation, the accused was charged and tried for the offence. His defence, as can be gathered from his statement recorded u/s 313 Code of Criminal Procedure is one of plain denial of the prosecution story as a whole. The trial Court however found him guilt and sentenced him as already noted above. Hence, this appeal.

3. Appellant was un-represented, Mr. N. Choudhury was, therefore, appointed as amicus curiae. Learned amicus curiae has raised the following points - (f) that, the evidence pertaining to handing over of blood-stained dao is discrepant and contradictory. (ii) the circumstantial evidence relied upon by the trial Court does not constitute a complete chain so as to unerringly point to the accused Appellant as perpetrator of the crime.

4. Mr. Goswami, learned P.P. on the other hand maintained that despite discrepancies pointed out by the learned amicus curiae, substantial evidence available on record and relied upon by the trial Court is sufficient to sustain conviction as recorded by the trial Court.

5. So far as the question of material Ext. I, i.e., blood stained dao is concerned, there is nothing on record to suggest whether it was sent to the State Forensic Laboratory for further chemical examination so as to connect the weapon with the crime alleged. The evidentiary value of the weapon seized lies in connecting it with the commission of crime. The prosecution has tailed in this regard, but despite this lapse on the part of the prosecution, it is still remained to be seen whether the circumstances as established in the case are sufficient to sustain the Appellant's conviction. Before proceeding further, it would be worthwhile to recall to mind the law relating to substantial evidence. To sustain the conviction circumstantial evidence must satisfy the following three conditions. Firstly, the circumstances from which inference of guilt is sought to be drawn must be cogently and firmly established; Secondly, circumstance should be of a definite tendency, unerringly pointing to the guilt of the accused and lastly the circumstance taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by none other than the accused and the circumstance should also be incapable of any other explanation or hypothesis than that of the guilt of the accused.

6. Now, bearing in mind the above principles, we proceed to examine the circumstance relied upon by the trial Court and those which emerging from the evidence available on record. Although the trial Court has restricted himself. The following three circumstances (i) the door of the house being locked and not open in the morning as usual, (ii) after holding persuasion and threat it was opened by the accused and on opening the same his wife was found to be lying dead in the house and (iii) a blood stained dao was recovered at the instance of the accused. So far as the recovery of blood stained dao, it has already been observed that the prosecution has failed to connect it with the crime alleged by not proceeding to get a report of the Chemical Examiner, but as pointed out earlier, this fact by itself does not materially affect the prosecution case. Added to the above circumstance as noted above, by the trial Court, the circumstance that the accused was living with his wife in the same house at the time of incident is yet another circumstance. It is the accused Appellant who is accountable for the incident as husband. It was his duty to protect the life of his wife. He has no explanation whatsoever to offer in his statement recorded u/s 313 Code of Criminal Procedure although his examination u/s 313 Code of Criminal Procedure, as conducted by the trial Judge, is highly unsatisfactory. It has been pointed out in several judgments that every incriminating piece of evidence bearing against the accused in the evidence adduced by the prosecution must be separately put to the accused so as to enable him to offer his explanation, if it is not so put, the very object of examining the accused is defeated. Notwithstanding this defective examination, the accused has not come out with any explanation whatsoever except one of false allegation and implication. The conduct of an accused immediately after occurred is relevant u/s 8 of the Evidence Act. It was argued by the learned amicus curiae that the house was intruded upon by some miscreants who attacked the Appellants wife. If that be so the Appellant's conduct assumes much importance. Here again, he failed. But it not because of his failure, that his guilt is sought to be established, his conduct is not even raising alarm in face of alleged conduct by intruders speaks volumes for itself.

7. It was in the early hours of the day that the Chowkidar P.W. 1 was informed of some incident at the Appellant's house. The Chowkidar found the door of the house bolted from inside, he went and reported the matter to the Manager of the Tea Garden who directed him to approach the police and get the door opened. On arrival of police on the scene, the door was still bolted from inside. It is not as if the accused opened the door on being asked to do so. It was at the point of gun after persuasion having failed and on being threatened that he opened the door. Except for his two kids, it was he who alone was in the house. It is not his case that on arrival of the Chowkidar and the Police he came out with his own explanation of miscreants having assaulted his wife. It is not even suggested either to P.W. 1 or to the I.O. P.W. 8 that any such outburst by way of explanation came from the accused.

8. Injuries as found by Dr. Gogoi P.W. 7 are comtable with the weapon used -

- (1) One incised wound in back of the neck lower part 12 cm x 3 cm cutting the 7th cervical vertebrae; blood vessels and nerves.
- (2) One incised wound in the middle part of the back of the thoracic wall of 16 x 4 cm, cutting skin, muscles vessels in that region.
- (3) One incised wound in the back of thoracic (illegible) size 14 x 4 cm cutting skin, muscles, bones.
- (4) One incised wound in the right part of thoracic wall in back of the body in its middle part size 10 cm x 4 cm cutting skin muscles, etc., cranium and spinal canal.

It may not be the same dao Material Ext.-I but the fact remained that sharp edged weapon was used in inflicting the Injury and those facts amply corroborated by the medical evidence.

9. Lastly, Mr. Choudhury argued that the two probable eyewitnesses namely the two young sons aging between 7 and 8 as per P.W. 8, were not examined by the prosecution. They were found weeping on opening the door and it is too much to expect from these young kids who lost their mother having deposed against their father. The circumstances as discussed above, fully stand the test, and in all human probability and unerringly the accused is the person who committed the crime.

In the circumstances, we find no force in this appeal. It is liable to be dismissed and accordingly dismissed. The conviction and sentence as recorded by the trial Court is maintained.

Before parting with the file, we would like to put our appreciation of the abled assistance rendered by the learned amicus curiae Mr. N. Choudhury in deciding this appeal.