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Mudhan Payeng Vs State of Assam

Court: Gauhati High Court

Date of Decision: May 22, 1981

Acts Referred: Penal Code, 1860 (IPC) â€" Section 302, 325, 34

Citation: (1982) CriLJ 241

Hon'ble Judges: S.M. Ali Mohamed, J; K.M. Lahiri, J

Bench: Division Bench

Judgement

K. Lahiri, J.
The appellant is an indigent defended throughout at the expense of the State. He belongs to the Backward Classes and is an

illiterate. He has been convicted u/s 302, I.P.C. and sentenced to imprisonment for life.

2. It is very difficult to narrate the prosecution story as different stories stem out at different stages. The first version of the prosecution story

emanating from ""the Ejahar"" is that on 20-6-1975 in the evening an altercation took place between the deceased Lashiram Mili and the accused

Gangaram Payeng over damages caused to the standing paddy of the deceased by Gangaram''s pigs. It was alleged that while Lashiram was

returning home from his field accompanied by some boys the accused ""lay in wait"" by the road side, under the cover of darkness, jumped out and

assaulted Lashiram with a lathi on his head. The boys who accompanied Lashiram raised alarm. Hearing the alarm the sons of the deceased P.W.

2 Mome Mili and P.W. 3 Budai Mili and P, W. 5 Musst. Menthoni Mini, the wife of the deceased came out and found the man lying with injuries.

The injured was brought home but ""on the third day he succumbed to his injury"". The first information report was lodged 24 hours after the incident

although the police station was only 10 miles away from the place of occurrence. No earthly reason has been assigned as to the delay in lodgment

of the ejahar. Police registered a case u/s 325 IPC but converted the same to Section 302 on the death of the injured. The police commenced

investigation, arrested the accused and three others, submitted a charge-sheet against the four suspects including the appellant u/s 302/34 IPC The

accused stood their trial before the learned Sessions Judge where, prosecution examined 10 witnesses and no witness was examined for the

accused. The learned Sessions Judge acquitted the rest of the co-accused but convicted the accused as alluded. The learned trial Judge held that

Lashiram died as a result of the head injury. At this stage, it is pertinent to observe that the injury on the head of the deceased was described by

Dr. P. C. Baruah, P.W, 10, as ""a cut injury"". We were somewhat surprised and turned to the postmortem report but were surprised to find

corroboration of the fact therein, namely, that the injury was "" a cut injury"". We must assume in the natural course of event that the doctors take

enough care and circumspection to describe the injuries during the process of autopsy. In the instant case the positive and affirmative statement of

the doctor, who held the post-mortem was that the injury was a ""cut injury"". It was not described as an incised looking injury to cast even a doubt

as to the nature of the injury. From the nature of the injury described we are constrained to hold that the weapon of assault was a sharp or at least

a semi-sharp weapon and could not have been an absolutely blunt weapon. We find no scope to arrive at any other conclusion other than the

finding we have reached, on appreciation of the testimony of the medical man read along with ""the post-mortem Report"". However, the learned

Sessions Judge overlooked the nature and character of the injury. In all probability it was not brought to his notice and accordingly he assumed that

the deceased died of a lacerated injury caused by a blunt weapon and not by sharp or semi-sharp weapon.

3. Be that as it may, the learned Sessions Judge could not place any reliance on the evidence of P.W. 2 Mome Mili and that too very rightly. For

the reasons set forth in his judgment, we cannot rely on the testimony of the said witness. The witness gave out a completely conflicting version in

Court than those set forth in the first information report lodged by him. It is impossible to rely on the testimony of such a witness who turns turtle

and gives such a contradictory story. He even denied the entire story pictured by him in the Ejahar. The learned Judge has very rightly rejected the

testimony of P.W. 3. His version is in direct collision with the story narrated in the Ejahar as well as the story made out by P.W. 2 Mome Mili in

his evidence. He stated that he was having food when P.W. 2 Mome Mili told him ""my father had been assaulted"". His father, the deceased,

sustained only one injury. As such, he could not have been an eye witness to the occurrence as claimed by him. Accordingly we concur with the

findings arrived at by the learned Sessions Judge that the testimony of the witness cannot be relied upon. P.W. 5 Menthoni gives a version which

was absolutely in contrast with and contrary to the story pictured in the first information report. It is hardly possible to believe that she was with the

deceased at that hour of the day when other persons were taking food. Her version that she could not recognise the assailants due to darkness

clearly shows that she could not have seen the weapon of assault. Further the witness gave a completely different version before the police. The

entire deposition of the witness made in the examination-in-chief is destroyed by her statement made before the police and duly proved in the case.

The learned Judge has very rightly passed over the testimony of the witness.

4. However, the learned Judge has relied on the evidence of P.W. 7 Paramananda Mili and sustained the conviction of the appellant. Let us try to

scrutinise the only beam or pillar on which the entire prosecution is grounded. Let us examine the vim of the testimonial capacity of the witness. Let

us judge whether the witness is trustworthy, reliable and unimpeachable.

5. A conviction may be sustained on the testimony of a single witness but Criminal Jurisprudence teaches us that we ought not to act on such

testimony unless the version finds ample support or we can place implicit confidence in the witness. P.W. 7 Paramananda was aged 25 years or

so. As such, he was not ""a boy"" to fit himself in the story narrated in the Ejahar. He says that he went out for a stroll after dusk and found the

appellant running with a husking-rod in his hand. He heard the cry of Lachiram''s wife, went there but kept mum, returned back and continued to

do so perhaps until he was produced by the prosecution before the police to bear up the case. His only evidence is that he saw the accused

carrying a house-hold implement, a husking-rod, A husking-rod, in this part of the land, is invariably made of wood. We are yet to come across a

sharp, semi-sharp husking-rod. Mr. A. Ahmed, learned Public Prosecutor also agrees. Therefore, even if we assume that the accused-appellant

was running with a husking-rod. the carrying of that weapon was an innocuous circumstance. Circumstance to be circumstantial evidence must be a

proved circumstance which is compatible with the guilt of the accused and no other conclusion can be drawn other than the guilt of the accused

person. The injury was a cut injury but the person was carrying a husking-rod We find no connection of the weapon carried with the injury caused.

It is nothing unnatural to see a person carrying a husking-rod nor is it unnatural to see a person running with such a rod in his hand. It is a daily

occurrence. Therefore, the instance itself is neither circumstance nor circumstantial evidence against the accused. Further, this version was never

narrated by the witness P.W. 7 Paramananda to any of the prosecution witnesses. So none supports his version. His version is not to be found in

the first information report, either. We find the conduct of the witness to be queer. He noticed a person running with a house-hold implement

(husking-rod); he heard a cry and found the deceased lying injured but could never suspect, at the relevant time, that there was any rational

connection between the accused carrying the house-hold implement with the injury of Lachiram. Accordingly, when he went to the spot he never

stated to anyone that he had noticed a suspect carrying an implement or words to that effect. He did not utter a word about seeing the accused

with any utensil. These are the circumstances wherefor we cannot rely on his testimony. Further, a person who could speak that the incident

happened in winter is hardly reliable. The witness said so. This version depicts to what extent the witness could go to picture a case in support of

the prosecution. The learned Judge not only overlooked all the important facets lurking in the evidence of P.W. 7 but completely omitted to note

that the witness narrated a completely different story of the occurrence to the Investigating Police Officer. His version is that he saw the accused

giving a blow to Lachiram, the witness himself asked the accused not to assault and thereafter he raised hue and cry when Lachiram fell down. This

version is a thousand miles apart from the story depicted by him in Court. Although he made such a statement to the police he denied the

statements altogether in Court to be thoroughly contradicted by the investigating police officer, vide page 23 of the paper book (cross-examination

of the Inspector of police, P.W. 8 Shri Dhiren Phukan). For the reasons set forth above we are unable to rely on the testimony of P.W. 7.

6. As a result of the foregoing discussions we hold that the accused is entitled to acquittal. Accordingly we set aside his conviction and sentences

and direct that he shall be set at liberty forthwith unless wanted in connection with any other case.