(1961) 12 GAU CK 0002

Gauhati High Court

Case No: None

Jogendra Nath Banthao		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: Dec. 21, 1961

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304

Citation: AIR 1962 Guw 62 : (1962) CriLJ 560

Hon'ble Judges: G. Mehrotra, C.J

Bench: Single Bench

Judgement

G. Mehrotra, C.J.

Appellant Jogendra Nath Bantha has been convicted by the Deputy Commissioner, Garo Hills, u/s 304, Part B, Indian Penal Code and sentenced to six years rigorous imprisonment. On the 15th April, 1960, is the afternoon, the appellant is alleged to have shot his mother Chattai Ravani with a gun. The deceased was taken to the Lakhipur Hospital, where she died Next day, the appellant sent an intimation to the Phulbari Police station that there was an accident in his house through a messenger. The Police investigated the case and submitted a charge sheet The appellant was charged u/s 302, Indian Penal Code. He pleaded not guilty to the charge. The prosecution examined a number of witnesses. Mst. Sonai Habhani (P.W. 1), a sister of the appellant, states that she was living in the same compound with the accused. In the afternoon, when she was working in the house, she heard a gun fire. Coming out, she saw her mother lying near the kitchen and she found injury on her left thigh. Thereafter, Mst. Ranji Rabhani (P.W. 2) and Mst. Osai came to the scene of occurrence. Satyen, brother of the appellant, went to the place of occurrence and bandaged his mother. Thereafter, a truck belonging to one Birbal was brought and her mother was taken to Lakhimpur hospital. Mst. Osai and Mst. Ranji went in the truck along with others. Pointing out Ext. 1, she stated that the accused shot at her mother with that gun and she filed a first information report at

the Lakhimpur Police station after her mother had died in the hospital She further stated that she saw the accused loitering near about and the gun was lying on the ground which she had denied earlier. She has stated that Mst. Ranji, Mst. Osai and many persons saw the accused going with a gun in hand. The doctor, who attended her mother, asked her as to who caused the injury. The mother had replied that her own son caused the injury. She could not speak any more. (His Lordship then reviewed the evidence and proceeded:)

2-8. The accused, when examined by the Deputy Commissioner, stated that on the day of the occurrence in the afternoon, on coming outside, he saw a rabid dog coming towards the compound. He thought it to be a mad dog and so for the purpose of firing at the dog, he went inside and got the gun ready with bullet inside. He chased the dog and then at the time of chasing the dog, the gun fired automatically all of a sudden. On hearing the cries of man, he found that the gun bullet struck his mother. After giving first aid, she was taken to Lakhipur for treatment. The defence mainly was that it was an accident and the appellant had no intention to kill his mother. He saw the mad dog coming and when brought out the gun and chased the dog, the gun went off accidentally hitting his mother. It has been argued by the counsel for the appellant that the Court below has rejected the defence story mainly on the ground that there is no mention of the mad dog in the report submitted to the Police by the accused. In that report, it was only mentioned that some accident had happened in the house of the accused-''If it were a fact that the gun went off accidentally when the accused was chasing a mad dog, this fact should have been mentioned in that report.

The contention is that statement made by the accused cannot be taken against him and the Court was wrong in basing its conclusions on the circumstance that the report made by the accused did not contain the story of chasing the mad dog. It is also contended that there is no evidence which will prove that the appellant killed his mother intentionally and unless the prosecution established the intention the appellant could not be convicted u/s 304, I.P.C. The prosecution witnesses were not in a position to state under what circumstances the gun was fired at the mother and nobody has actually seen the accused aiming the gun at his mother. Under these circumstances, it was submitted, the conduct of the accused as disclosed by the prosecution witnesses was consistent with the accident also, and in this view of the matter the prosecution failed to establish the guilty intention on the part of the appellant.

It is true that the prosecution witnesses did not actually see the accused firing it his mother, but the intention can be inferred from the circumstances of the case. The inmates of the house, the sister of the accused and the sister-in-law of the accused, have both stated that immediately on hearing the sound of gun fire, they came out and saw the accused''s mother lying injured and the gun was found near the accused. P.W. 1, in examination-in-chief has stated that she did not seethe accused

or the gun at the place of occurrence, but in cross-examination, she has definitely stated that she found Ext. 1 lying there and the accused loitering about. P.W. 2, sister-in-law of the appellant, has stated that the gun was lying at the place of occurrence and the accused was loitering about. The accused in his statement has admitted that the mother died of the bullet shot received from his gun. He has pleaded that the gun went off accidentally when he was chasing the mad dog. The fact, therefore, is that the mother died of the injury received from the gun and that it was the accused who caused the death of the mother. This fact is amply proved.

9. The contention of Dr. Medhi is that a part of the statement of the accused cannot be relied upon. If the statement is to be taken into consideration, the entire statement should be considered and if the whole of the statement is accepted, the case of accident is fully established. He has referred to certain authorities in support of tae submission that the confession of the accused cannot be relied upon in part. If the accused admits his presence at the scene of the occurrence and further admits that it was he who had fired his gun, which had resulted in the death of his mother, there is no bar to the Court relying on that part if the statement, even though the explanation given by the accused that the gun went off accidentally may not be acceptable to the Court, having regard to the evidence on the record. There is the evidence of the Doctor also, who recorded the dying declaration. The daughter of the deceased has also corroborated the fact that before the doctor, her mother gave out that she was killed by her son. The oral dying declaration is no doubt a very weak piece of evidence; but the evidence of the doctor that the mother told him that she had been injured by her son, corroborates the statements of the prosecution witnesses that the gun was fired by the appellant, which resulted in her death

10. It is then urged that the doctor in his statement has said that he immediately wrote out the statement made by the deceased on a paper, but that paper has not been produced. As I have already indicated, there is no reason to doubt the statement of the doctor that before him, the deceased stated that it was her son who injured her. If the prosecution has succeeded in proving that the injury was caused by the appellant that he used his gun and the gun shot injured the deceased, the only inference which can be drawn is that the appellant intended to injure his mother, unless it is established by the evidence on the record that the gun went off accidentally and that the appellant was chasing a mad dog when the accident happened. There is no evidence on record to prove this fact, nor can it be inferred from the evidence of the prosecution witnesses that it was a case of accident. The evidence of P.W. 11 shows that the trigger was not slack. There was, therefore, no chance of the gun going off accidentally. From the evidence, the charge has been fully established against the appellant.

11. Dr. Medhi has also contended that the trial by the Deputy Commissioner was without jurisdiction. Reliance is placed on paragraph 5 of the Sixth Schedule to the

Constitution, which provides as follows:

5. Conferment of powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offences. - (1) The Governor may, for the trial of Suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or, as the case may be, the Code of Criminal Procedure 1898, as he deems appropriate, and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

(2) The Governor may withdraw or modify any Of the powers conferred on a District Council, Regional Council, court or officer under sub-paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, shall not apply to the trial of any suits cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply.

The. argument is that Sub-para (1) of para 5 gives power to the Governor to confer jurisdiction On the District Council Courts to try cases punishable with death, transportation for life or imprisonment far a term of not less than five years under the Indian Penal Code. The District Council has been formed for the Garo Hills district and unless the Governor confers power an the District Council to try such suits, no Court is competent to try and dispose of such cases. Paragraph 5 only gives power to the Governor to confer jurisdiction on the'' District Council Courts and the subordinate District Council Courts to try certain classes of cases mentioned therein. Paragraph 4 of the Sixth Schedule to the Constitution provides that the administration of justice in autonomous districts vests in the District Council, and paragraph 5 is an exception to paragraph 4. In respect of the cases mentioned in paragraph 5, the District Council Acquires no jurisdiction to try under paragraph 4; unless the power is conferred by the Governor.

This sub-paragraph, to my mind does not take away the power of the Deputy Commissioner to try such cases so long as the power has not been conferred on the District Council. If the contention of the appellant is accepted, then till the power has been conferred on the District Council to try such cases, no Court in the Garo Hills district can try cases, in which death penalty, life imprisonment or imprisonment for

more than five years can be awarded. Criminal justice is administered in this area under the Rules for the Administration of Justice and Police In the Garo Hills district, framed by the Governor on the 29th March, 1937. It is not disputed that these Rules In so far as they have not been affected by the provisions of the Sixth Schedule to the Constitution, are still in force in 1953 the District Council with the previous approval of the Governor of Assam, under Sub-para (4) of para 4 of the Sixth Schedule and in the exercise of its, powers under para 11 of the Sixth Schedule, framed certain rules called the Garo Hills Autonomous District (Administration of Justice) Rules, 1953. These Rules provide for the constitution of Village Courts and also lay down the powers of the District Council, Subordinate District Council and Village Courts. Rule 23 of the Rules lays down:

(1) A Subordinate District Council Court shall not be competent to try suits and cases-

(a) to which the provisions of Sub-paragraph (1) of paragraph 5 of the Sixth Schedule to the Constitution apply, unless the Court has been authorized by the Governor to exercise such powers for the trial of particular class or classes of cases and suits specified in that behalf by the Governor as required under the said sub-paragraph (1) of paragraph 5 of the Sixth Schedule;

(b) in which one of the parties is a person not belonging to a Scheduled Tribe....

Sub-clause (c) of Rule 23(1) enumerates certain specific offences, which are not triable by Subordinate District Council Courts. Rule 24 provides-

(1) Suits and cases referred to in Rule 23 shall continue to be tried and dealt with by the existing Courts until such time as the Governor deems fit to invest the Subordinate District Council Court with such powers by notification in too Gazette.

(2) For the purposes of this rule the existing Courts mean the Courts of the Deputy Commissioner and his Assistants.

Rule 24 thus clearly provides that till the Governor confers the power to try suits or cases referred to in Rule 23 on the Subordinate District Council Courts, the existing Courts which include the Courts of a Deputy Commissioner will continue to try such cases,. Sub-clause (a) of Rule 23(1) which I have already quoted, refers to the cases mentioned in paragraph 5(1) of the Sixth Schedule to the Constitution. Thus the cases mentioned in Paragraph 5 of the Sixth Schedule to the Constitution are cases referred to in Rule 23 and the provisions of Sub-clause (2) of Rule 24 will be attracted, to such cases. The Deputy Commissioner was ,thus entitled to try the appellant and the trial was not without jurisdiction.

12. This appeal has no force and it is rejected.