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(1994) 1 GLJ 88

Gauhati High Court

Case No: Criminal Jail Appeal No. 12 of 1987

G.Nungshithoi Kabui — APPELLANT

Vs

State of Manipur — RESPONDENT

Date of Decision: Dec. 7, 1993

Acts Referred:

- Penal Code, 1860 - Section 304 Part 2
- Penal Code, 1860 (IPC) - Section 304 Part 2

Citation: (1994) 1 GLJ 88

Hon'ble Judges: J.Sangma, J and H.K.Sema, J

Bench: Division Bench

Advocate: A.Nilamani Singh, Advocates appearing for Parties

Judgement

J. Sangma. J.

1. The appellant, G. Nungshithoi Kabui, has brought this appeal from the judgment dated 30.6.83 of Shri Y. Ibotombi Singh, Sessions Judge, Manipur in Sessions Trial Case No. 10 of 1979 convicting and sentencing him under section 302 IPC to surfer RI for life.

2. The prosecution case was this. At 12 AM (noon) of 10.10.78 one Khundrakpam Maipak Singh lodged the following report to OC of Nambol PS.

"To

The O/C, Nambol Police Station.

Complt.:Khundrapara Maipak Singo, S/o late Kh.Thambaljao Singh of Laimapokpam Awang Leikai.

Versus

1. Nungshithoi Kabui S/o Gulap Kabui of Laimapok pam Kabui Village.

2. Girani Kabui, S/o Do

3. Thambousana Kakui, S/o Do of Do

4. Yaishakul Kabui, S/o Thambal Kabui of Do

5. Tompok Kabui, S/o (L) Bokul Kabui of Do and other 10 persons.

Sir,

My humble request is that today, dated 10.10.78 at about 11 O, Clock the three of them namely (1) Yumnam Achoubi Singh (2) Khundrakpam Dijamani Singh and one unknown friend of theirs were proceeding for a walk towards Leimapokpam Kabui Village and the above named accused persons had beaten severely No. 1 and 2 with sword and stick. Thus the two injured persons are under treatment now at the Leimapokpam Dispensary. Therefore, it is reported kindly to arrest these culprits and take necessary action against them.

Yours

Sd/ Kh. Maipak Singh, 10.10.78"

Upon this report the OC of Nambol PS registered FIR Case No. 92 (10) 78 under section 148/149/326 IPC and did the investigation by himself. He recorded the statement of Maipak Singh, the informant, at the Police Station at 12.05 PM of 10.10.78 and went to Leimapokpam Primary Health Centre where he saw Achou Singh in unconscious state and Dwijamani Singh in a conscious state and able to speak though he also was injured. At dispensary he recorded the statement of Dwijamani Singh. After that he reached the place of occurrence at village Leimapokpam Kabui at 12.45 PM and arrested the accuseds (1) Nungshithoi Kabui, (2) Thambounsana Kabui, (3) Yaishakal Kabui and ,4) Tompak Kabui. Accused Girani Kabui had absconded. At 6 PM he got information that the injured persons had been shifted to RMC Hospital, Lamphelpat; but in the morning of next day (11.10,78) he received information that Achou Singh had expired in Lamphelpat hospital during the night. At 8.30 AM of 11.10.78 he made inquest report (Ext. P4) of the dead body and made it over for autopsy. Thereafter he seized green bamboo stick (Ext. MO 8) from the piggery of Tompa Kabui of Kabui Village by a seizure list (Ext. P 19). After completing investigation he submitted a charge sheet under section 148/119/325/326/302 against the appellant and four other accused including an absconder. The Chief Judicial Magistrate committed the case to the Sessions Court for trial.

3. At first the case was on the file of Additional Sessions Judge in whose Court the absconding accused Girani Kabui surrendered. The learned Add! Sessions Judge framed charge under section 149/301 IPC against all five for murder of Achou Singh. He framed

another charge under section 149/326 IPC against them for grievous hurt to Dwijamani Singh. AH of them pleaded not guilty to the charge and wanted a trial.

4. In all, the prosecution examined 12 PWs; they include the informant (PW 1), the doctor (PW 2) of Primary Health Centre who first examined the injury on Achou Singh, the doctor of Lamphelpat Hospital who did post mortem (PW 11), the 2 eye witnesses of the occurrence (PWs 4 and 9) and the IO (PW 12). After examining PW 9 the case was transferred to the Court of Sessions Judge. PW 10 was declared hostile. On closure of the prosecution the accused were examined under section 313 CrPCjbut they did not examine DW.

5. Dwijamani Singh, Rajen Sharma and Achou Singh were Manipuri Hindus whereas the appellant was a tribal man. On shifting the evidence, the learned Sessions Judge came to this finding : (1) In the morning hours of 10.10.78 Dwijamani Singh (PW 9) was hosting his 3 friends, namely (i) Rajen Sharma, (ii) Achou Singh (the deceased), and (iii) the appellant for a lunch at his house. (2) When meals were laid for eating together, Achou Singh told that the appellant, a Tribal man, should not be allowed to eat with them. (3) At this, the appellant''s sentiment was hurt and he left in anger without eating. (4) When, after lunch, the 3 came out to eat pan from a shop near Kabui Village, appellant appeared and assaulted Achou Singh with a bamboo stick (Ext. MO 8) who latter on died of the injury of that assault in Lamphtlpat hospital. The learned Judge did not find materials against the 4 other accused and acquitted them but convicted and sentenced the appellant alone under section 302 IPC as aforesaid. Hence the appellant brought this appeal.

6. Mr. Nilamani Singh, the learned Advocate Amicus Curiae for the appellant, in the first place, argued that the PWs being highly interested, it was unsafe to convict the appellant on their evidence. In this case the main PWs who proved the assault are PW 4 (Rajen Sharma), PW 8 (Thambalngou Singh) and PW 9 (Dwijamani Singh). There is no denial by defence that Dwijamani Singh hosted the three (1) the deceased, (2) Sri Rajen Sharma and (3) the appellant; to a lunch at his house on 10.10.78. This shows that the appellant was also the friend of Dwijamani Singh. There is also nothing to show that Rajen Sharma and PW P. (brother of Dwijamani Singh) was inimical to appellant and, therefore, keen to get him convicted. These 3 PWs were natural witnesses. PWs 4 and 9 stated that when meals were laid for eating, Achou Singh told that he would not eat with appellant as he was a tribal; and at this the appellant was hurt and he left in angry mood. These PWs further stated that after taking meals, they then went to Pan shop and when were returning, the appellant suddenly appeared and told that he would beat Achou Singh for insulting him in the house of Dwijamani. The defence could not break this evidence in cross examination. Tharnbalngou Singh (PW 8), the brother of Dwijamani said that after about three minutes of entering for meal the appellant left in angry mood. This fact also remained unshaken. Ra}en Sharma and Hwijamani stated that appellant assaulted Aehou Singh with bamboo stick from piggery. The defence could not dislodge this fact also. We therefore repel the first point even without hearing the reply from the learned PP.

7. The second point argued by learned counsel for the appellant is the charge of beating with a bamboo stick has not been proved; so the appellant, at best, could be said to have assaulted Achou Singh only with hands. The IO (PW 12) deposed that at 1 45 to 2 PM he took down the statement (Ext. P 20) that he (appellant) kept the bamboo stick used by him in assaulting Achou Singh near the piggery of Tomba Kabui. The relevant part of the recorded statement (P 20) was as follows :

"The bamboo handle held by me at the time of beating Yumnam Achou was kept near the sty of Tomba Kabui of our village. I shall be able to point out and deliver the same by going there.

The above statement was written by the Police Officer on my dictation, read over and heard and the wordings are all correct. Attested:

1. Sd/Tongbram Ibohal Singh. S/o L. Tochou Singh, 50 yrs. of Utlou Makha Leikai.

2. Sd/H. Gourachandbi Singh, S/o Pathou Singh 49 yrs. of Heikrujam

Sd/ (G. Nungshithoi Kabui)

The above statement is recorded by me while the accused is in the police custody today the 11.10.78 at about 1.45 PM.

Sd/ OfficerinchargeNBL PS, Manipur."

It shows that Ext. P 20 was not written by PW 12 (IO). The prosecution did not examine the writer. Out of the 2 witnesses who signed in Ext. P 20 and the seizure list (Ext. P 19) one (H. Gourachandbi) died. So the prosecution could examine only Ibungohal Singh (PW 10). This witness (PW 16) stated that the appellant professed ignorance; but the OC took him to Kabui Village where the appellant by proceeding towards a piggery shed belonging to Tomba Kabui took out one blood stained bamboo stick and handed it over to police who then seized it by a seizure list Ext. P 19. He stated that they then returned to PS. Because this witness stated that the appellant professed ignorance, the prosecution declared .him hostile. In cross examination by the PP, PW 10 supported prosecution case by saying his earlier statement that accused professed ignorance was incorrect. In cross examination for defence he stated that the statement Ext. P 20 was made by appellant after the recovery of the bamboo stick. Appellant"s counsel argued that since the recording of Ext. P 20 was after the seizure of bamboo stick, it can not be proved under section 27 of the Evidence Act. Section 27 says :

"27. How much of information received from accused may be proved :Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not as relates distinctly to the fact thereby discovered, may be proved."

To support the contention he placed Earabhadrappa vs. State of Karnataka, AIR 1983 SC 446. There it was held :

"For the applicability of S. 2.1 two conditions are prerequisite, namely (l)the information must be such as has caused discovery of the fact; and (2) the information, must "relate distinctly" to the fact discovered. Under S. 27 only so much of the information as distinctly relates to the facts really thereby discovered is admissible. The word "fact" means some concrete or material fact to which the informal! jn directly relates."

8. On reading the evidence of PWs 4,9,10 and 12 together we are inclined to think that the appellant first told about the bamboo stick after which he led the IO and showed it and the IO after seizure and on coming back to PS got the P 20 recorded by another officer to establish the fact of discovering the bamboo stick. So we think that by ignoring Ext. P 20 we can rely on the evidence of PWs 4 and 9 and hold that bamboo stick was discovered on the information of appellant and that the appellant had assaulted the deceased with it. Evidence shows that the bamboo stick was dry an i light in weight.

9. PW 2(Dr. Gulapi Singh) is the doctor of PHC who first examined the injuries of Achou Singh on 10.10.78 and found :

1. Lacerated wound 4" gaping ï¿½" in the middle Depth ï¿½" on the scalp of the frontal region of the head.

2. Bruise 4ï¿½ X 4" on the forehead and right eyebrow.

10. PW 11 (Dr. Bijoykumar Singh) is the doctor of Lamphelpat hospital who performed autopsy on dead body of Achou Singh. He did not say that the injuries were grievous; but said that death, in his opinion was due to the injury of internal hemorrhages like subdural, dural and intra cerebral hemorrhages caused by blunt heavy weapon and it could have been caused by MO 8 when it was green. But PWs 10 did not say that it was wet and heavy at the time of seizure. PWs 4 and 9 also did not say that the bamboo was wet/green hard at the time of beating.

11. Lastly the learned counsel for the appellant argued that the deceased provoked the appellant by saying in the house of host Dwijamani that he would not eat with a tribal. The appellant thereafter assaulted him only under grave and sudden provocation and in the absence of evidence from PW 4 that the bamboo stick was green and heavy as also in the absence of evidence from the doctor (PW 11) that the injury was grievous, the appellant at best, could be convicted only under section 323 JPC Mr. Irabat Singh, the learned PP tried his utmost to refute the contention. He referred to the evidence of PWs 4 and 9 and said that the appellant"s assault was brutal and merciless and. therefore, the appellant has fully deserved to be convicted under section 302.

12. We find that on prosecution"s own showing the deceased has humiliated the appellant and hurt his sentiment by saying that he would not eat with a tribal and that too

in anothor man"s house. This attitude of his was impudent which in the present day is highly reprehensible and the appellant who was aged only 25 years, under a sudden provocation had beaten him with dry and light bamboo stick without intention to cause death. Before the trial, the appellant was in custody for 4 months 10 days. On conviction he went to jail on 30.6.83 and was released on bail by this Court on 3.12.83 which is 4 years 5 months and 13 days. So in total he suffered incarceration for 4 years 9 months 13 days. On the facts of the case we are clearly of the view that conviction under section 304, Part IIIPC and sentence to the period undergone would adequately meet the ends of justice in this case.

13. Accordingly we alter the conviction to section 304, Part II IPC and reduce the sentence to the period already undergone and discharge him from the bail bond.