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Date: 31/10/2025

(1998) 2 GLT 291

Gauhati High Court

Case No: Criminal Appeal No. 13 (J) of 1995

Hussain Ali (MD.) APPELLANT

Vs

State of Assam RESPONDENT

Date of Decision: March 24, 1998

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 164, 229, 230#Penal Code, 1860 (IPC) â€" Section 302

Citation: (1998) 2 GLT 291

Hon'ble Judges: V.D. Gyani, Acting C.J.; D. Biswas, J

Bench: Division Bench

Advocate: T. Islam, for the Appellant; D. Goswami, Public Prosecutor, for the Respondent

Judgement

V.D. Gyani, Actg. C.J.

1. This jail appeal arises out of judgment and order dated 15.11.95 as passed by the Sessions Judge, Nagaon in Sessions Case No. 217(N)/95

thereby holding the Appellant guilty of offence punishable u/s 302 IPC and sentencing him to undergo imprisonment for life.

2. The conviction is based on plea of guilt as pleaded by the accused Appellant. Prosecution case stated in brief was that on the fateful night of

11.6.95 the accused and his wife alongwith their own son were sleeping together in the Kitchen room of his brother-in-law Hamid Ali. It is alleged

that the accused dealt a dao blow on the neck of his wife Mustt. Sahera Khatun as a result of which she met with instantaneous death, The

accused Appellant fled away from the scene. A report to this effect was lodged by Abdul Hamid at the outpost of Police Station, Samaguri next

day morning around 12 noon. The place of occurrence is about 10 Kms. away from the Police Station as can be gathered from the FIR. It was

initially entered in the G.D. Entry Book at Serial No. 188 dated 12.6.95 and subsequently forwarded to Samagruri P.S. for registration.

Accordingly case u/s 302 IPC was registered and taken under investigation. During investigation the incriminating article, weapon of offence was

recovered and statement of witnesses got recorded u/s 164 Code of Criminal Procedure On completion of investigation the accused was charged

and tried for the above offence. The trial Court upon consideration of the record of the case and the document submitted therewith framed charge

u/s 302 IPC against the accused and convicted him on his pleading of guilt to the charges and sentenced him to undergo imprisonment for life.

Hence, this appeal from jail.

3. Since the Appellant was unrepresented Mr. M. Bhuyan was appointed as amicus curiae. But when this appeal is taken up for hearing it is

regretted to note that he is not available. We requested Mr. T. Islam, who is present in the Court to appear and assist the accused Appellant. He

acceded to the request, but prayed for some time to prepare for the case which was accordingly granted.

4. Mr. Islam, learned amicus curiae submits that in face of the fact that the murder had taken place at the residence of Appellant''s brother-in-law

Abdul Hamid and the statement of witnesses were got recorded u/s 164 Code of Criminal Procedure whereby pinning them down to a particular

set of statement without giving them the freedom to state the truth. Except possibly at the cost of prosecution for purjury with some facts, which

vitiate the discretion exercised by the learned trial Court. Referring to the statement of the accused Appellant, recorded u/s 229 Code of Criminal

Procedure wherein the accused stated that he dealt a blow with ''dao'' on the neck of his wife because she always used to quarrel with him. Taking

up a clue from this statement Mr. Islam argued that the possibility of sudden quarrel resulting in sudden unfortunate incident cannot be ruled out.

The trial Court should, therefore, have proceeded with the trial instead of rendering decision and conviction on the basis of his plea of guilt. This

submission made by the learned amicus curiae is quite sound and cannot be lightly brushed aside. Section 229 itself cast ample scope to the Judge

or Magistrate to act in his discretion when the accused pleads guilty. Even if, accused so pleads guilty, he can still be tried u/s 230 Code of

Criminal Procedure in case he is not convicted u/s 229 Code of Criminal Procedure It is a long standing practice not to accept the plea of guilt to

capitalise the charge. The circumstances and reasons as pointed out by the learned amicus curiae are weighty enough to interfere with discretion

exercised by the trial Court in convicting the Appellant on the basis of his plea of guilt to a capital charge like murder. Even the trial Judge in the

impugned order has indicated his mind that ordinarily he would not accept such a plea of guilt. But all the same, in the instant case he has accepted

the reasons as indicated above which militate against the proper exercise of discretion. Although a statement u/s 164 Code of Criminal Procedure

cannot be treated as substantive evidence, but going through the statement of Intaz Ali and Samala Khatoon, the mother of the accused, there was

some dispute over payment of rice to be paid to the deceased"s father. According to the Appellant"s mother the accused had asked his wife,

whether she had brought the money from her father? She gave a negative reply. Now, these are all matters which could well be considered if the

trial had proceeded. Abdul Malik (P.W. 2) whose statement was recorded u/s 164 Code of Criminal Procedure have referred to altercation

between the accused and the deceased. We would like to make it clear that we are in no way appreciating the evidence. This is just a reference to

certain broad features, as they emerge from the record including statement recorded u/s 164 Code of Criminal Procedure and it is in this

background that the priority of exercising discretion, as sought to be exercised by the trial Judge has to be adjudged.

5. Considering the facts and circumstances as pointed out by the learned amicus curiae and the statements recorded u/s 164 Code of Criminal

Procedure We are of the view that the discretion exercised by the trial Judge cannot be said to be an appropriate exercise of discretion. As is well

known, as a matter of practice Judges prefer not to act on plea of guilt in murder cases lest the evidence may disclose that the facts proved do not

in law constitute offence charged, but some lesser offence. We have broadly indicated some of such salient features emerging from the material

available on record, and we reiterate that it is entirely for the trial Court to independently appreciate these features on merits and may even reject

the same, but in any case the conviction based on plea of actual guilt, that too without affording opportunity of hearing to the accused is not a

matter of pure academic. The conviction and sentence as recorded by the trial Court is thus set aside. The matter is remanded back to the trial

Judge for proceeding with the trial in accordance with law.

6. It is only to be hoped that in view of the time that has already elapsed, the trial as directed shall be expedited and concluded within a period of 3

months considering the fact that the accused is in jail.

7. Mr. Goswami, learned P.P. on going through the trial Court record informed us that although a reference has been made to a defence counsel,

there is neither any reference nor any Vakalatnama or memorandum of appearance is found in the record. It needs be emphasised that the counsel

to be provided in such cases must be a competent one capable to discharge the task assigned, which is not an empty formality.

8. Appeal stands disposed.

9. Before parting, we would like to record our appreciation to the valuable service rendered by Mr. T. Islam. He will be entitled to his

remuneration permissible under the Rules.