

(2010) 01 GAU CK 0020

Gauhati High Court

Case No: Criminal Appeal No's. 220 and 223 of 2003

Md. Meyar Ali and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Jan. 27, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 326

Citation: (2010) 3 GLR 244

Hon'ble Judges: Ranjan Gogoi, J; Hrishikesh Roy, J

Bench: Division Bench

Advocate: A.K. Purkayastha, B.D. Das, H.K. Sarma, A. Deb, M.M. Mali, J.M. Choudhury, F.H. Laskar, B. Ahmed, N. Haque, M.H. Borbhuiya, S.K. Deori and H.I. Choudhury, for the Appellant; K.M. Majumdar, for the Respondent

Final Decision: Dismissed

Judgement

Hrishikesh Roy, J.

These 2 Criminal Appeals have been filed against the judgment and order dated 29.4.2003 in Sessions Case No. 118/95 rendered by the learned Sessions Judge, Cachar at Silchar, whereby the accused appellants have been held guilty for offences punishable under Sections 149/302 and 149/326 of the IPC. Following such conviction u/s 149/302 the accused appellant Meyer Ali has been sentenced to R.I. for life and also ordered to pay a fine of Rs. 2,00,000 and in default, R.I. for additional 2 years. For his conviction u/s 149/326 accused Meyer Ali is sentenced to undergo R.I. for 2 years and to pay a fine of Rs. 25,000 and in default, to suffer 4 months further imprisonment.

For similar convictions, u/s 149/302, IPC the other accused appellants have been sentenced to R.I. for life and also to pay a fine of Bs. 20,000 each and in default, further R.I. for 6 months. For their conviction u/s 149/326, they have been also

sentenced to undergo imprisonment R.I. for 1 year and to pay a fine of Rs. 1,000 each and in default, 1 months further imprisonment.

All the sentences have been ordered to run concurrently.

2. We have heard Mr. J.M. Choudhury, learned senior counsel appearing for the 6 appellants in CrI. Appeal 223/2003. Mr. A.K. Purkayastha, learned Counsel represents the 3 appellants in CrI. Appeal 220/2003. Mr. K.M. Majumdar, learned public prosecutor represents the State in both the appeals.

3. In this case the criminal process was set in motion by filing of an FIR, on 5.9.1993 at about 10.30 a.m. by Gulezar Ali (PW1). In the FIR, 12 persons namely, (1) Meyer Ali, (2) Pochai Mia, (3) Ala Uddin, (4) Safar Ali, (5) Komar Uddin, (6) Kamal Uddin, (7) Forij Ali, (8) Mukabir Ali, (9) Motor Ali, (10) Akal Ali, (11) Tamij Uddin & (12) Jamal Uddin were named as accused.

3.1 The prosecution case is that the said named persons armed with deadly weapons such as Ballam, Daggar, Lathi etc. criminally trespassed into the land being ploughed by Gulezar Ali (PW1) and his uncle Armuj Ali and started attacking them. On seeing the attack, Nekruj Ali, Tafazzul Ali (PW5) and Jaban Ali (PW2) rushed to the place of occurrence and they too were assaulted by the accused persons. As a result of the assault, Armuj Ali ("deceased 1") died at the spot and the informant Gulezar's father Nekruj Ali ("deceased 2 died 4 days later in the hospital"), and his brother Tafazzul Ali (PW5) and uncle Jaban Ali (PW2) sustained serious injuries. Police thereafter registered Sonai P.S. Case No. 198/93 under Sections 147/148/149/447/326/302 of the IPC, and took up investigation of the case.

3.2 Four days later, Nekruj Ali succumbed to his injuries at Silchar Medical College Hospital. The police held inquest on the dead bodies of the deceased Armuj Ali and Nekruj Ali and also arranged for their post mortem examination. After completing the investigation, charge sheet was filed against 12 accused, inter alia, u/s 302, IPC. As the case was exclusively triable by a Sessions Court, by order dated 8.11.1995 the Addl. Chief Judicial Magistrate, Cachar committed the case for trial to the Sessions Court, Silchar. During the trial of the case, 3 of the accused namely Ala Uddin, Forij Ali and Mukabbir Ali died and accordingly case against 3 of the 12 accused abated.

4. From the side of the prosecution, 10 witnesses were presented while there was none from the defence. The common thread of the explanation furnished by the accused in their statements u/s 313 of the Code of Criminal Procedure was that the land mentioned in the FIR, belonged to the husband of one Patarunnessa who is the sister of accused Meyer Ali, Safar Ali and Pochai Mia (the 3 appellants in Criminal Appeal 220/2003). It was claimed by the accused that while the said land was being cultivated by the accused persons, they were attacked by the informant Gulezar Ali and his group who were armed with deadly weapons. In their Section 313 statement the accused stated that they took shelter in accused Ali Uddin's house which was then set on fire by the informant and his uncle Jaban Ali (PW2). The accused claimed

ignorance about the death of Armuj and Nekruj Ali and also denied that they had assaulted PW1, PW2 and PW5.

However, the accused did not adduce any evidence in support of their above version. More specifically they did not produce any evidence to establish that the land in question is owned by the husband of Patarunnessa and that they were lawful in possession of the said land.

POST MORTEM EVIDENCE

5. PW8, Dr. B.K. Borah, conducted the post mortem examination on 6.9.1993 on the dead body of Armuj Ali (D.1) who died at the place of occurrence. The following injuries were recorded in the post mortem report (Exbt. 5) of deceased Armuj Ali -

1 Linear bruise on the right side of the back of the thorax placed obliquely of 19 x 4 cm size.

2. Linear bruise on the left side of the back of the thorax situated obliquely of 22 x 5 cm. size.

3. One stab wound on the lower border of the left 12th rib and at mid-axillary plane of 2 x 1 x 15 cm and which has gone deep into the abdomen cavity.

Scalp: One bruise of 7 x 4 cm size situated on the right temporal region with extensive bruises under it.

Brain: Subdural haemorrhage present on the right half of the cerebral hemisphere.

Spleen: Spleen shows through and through stab wound of 2 x 1 cm under the injury No. 3.

Small intestines were cut and the mesenteric blood vessels were cut under the wound No. 3 with haemorrhage.

Peritoneal cavity was full of blood measuring about 2 liters.

The doctor recorded that the death of Armuj Ali (deceased 1) was due to shock and haemorrhage as a result of ante mortem injuries caused by sharp pointed weapons and hard blunt objects.

6. PW6 Dr. K.K. Chakraborty proved the post mortem report (Exbt. 4) conducted on 9.9.1993 on the dead body of Nekruj Ali (deceased 2) who died 4 days after the assault in the Silchar Medical College hospital.

The Post mortem report recorded the following injuries on Nekruj Ali -

1. One stitched wound on the left side of the chest wall 6 cm above the left nipple and 7 cm lateral to the mid chest line 1 cm in the length with inflammatory changes. Margins of the wound regular.

On tracing the path it has entered the cavity of the chest in between 2nd and 3rd ribs by cutting the lower border of the 2nd rib and the intercostals muscle making a wound in plura entered the middle lobe of left lung in costal surface making a wound in lung measuring 1/2 cm x 1/22 cm x 1/4 cm directed left to right side.

Neck - Externally and internally healthy.

Pleurae - Contained about 1 1/2 litres of clotted blood.

2. Contusion left side of the forehead 3 cm x 2 cm bluish black in colour.

Scalp - Contusion under the injury No. 2 present.

The injuries are ante mortem and about 4/7 days old. Injury No. 1 caused by sharp weapon and injury No. 2 caused by blunt object.

The witness opined that the death of deceased 2 was due to shock and haemorrhage as a result of ante mortem injuries to the lung caused by sharp pointed weapons.

INJURIES ON EYE WITNESSES

7. Dr. P.C. Kumar (PW9) who examined Gulezar Ali (PW1) at Silchar Medical College Hospital on 5.9.1993 found the following injuries on the injured witness:

Three cut injuries over the scalp of size 6" x 4" x 5", 4" x 1/2" and 3" x 1/2". He had another injury on the left hand where there was a cut of the tendon of the left index finger. He was an indoor patient. The scalp injuries were caused by blunt weapon and simple in nature. The hand injury was caused by sharp weapon which was grievous in nature.

7.1 On the same date, Dr. P.C. Kumar also examined Jaban Ali (PW2) and recorded the following injuries on him-

1. Laceration over the scalp 3" x 1/2".
2. Blunt injury over the right forearm.
3. Fracture of the middle phalanx of the left little finger.

All the above injuries were caused by blunt weapon. Injury Nos. 1 and 2 were simple but injury No. 3 was grievous.

The injury reports on PW1 and PW2 were exhibited as Exbt. 7 and 8 in the trial court.

EVIDENCE OF INJURED EYE WITNESSES

8. PW1 Gulezar Ali who lodged the FIR in the case stated that on the day of occurrence at about 6 am while he and his uncle Armuj Ali (deceased 1) were ploughing their self owned land, all the accused persons gathered in the house of accused Ala Uddin. From Ala Uddin's house the accused armed with deadly

weapons like lathi, dao, ballam etc. came to the ploughing field and asked Gulezar (PW1) and Armuj Ali (deceased 1) to stop ploughing. Out of fear, Gulezar Ali and Armuj Ali stopped their ploughing. Then accused Meyer Ali, Ala Uddin, Pochai Mia, Safar Ali, Sunam Uddin and Jamal Uddin attacked Armuj Ali and Gulezar Ali (PW1) who raised alarm. Hearing the shouts the witness's father Nekruj Ali (deceased 2), uncle Jaban Ali (PW2) and brother Tafazzul Ali (PW5) came out of their houses to the place of occurrence. In the mean time the PW1 saw accused Meyer Ali assaulting Armuj Ali (deceased 1) with a ballam in his stomach and also saw accused Ala Uddin assaulting him with a dao. When PW1 tried to save his uncle Armuj Ali, the other accused attacked Gulezar (PW1).

8.1 It was further testified by Gulezar that accused Tamiz Uddin assaulted him with a ballam in his abdomen and accused Safar Ali and Motor Mia assaulted him with a dao on his head and other accused assaulted him with lathis. When the witness's father Nekruj Ali shielded Gulezar with his body to save him accused Meyer Ali, Pochai Miah, Safar Ali, Sunam Uddin and Kamar Uddin assaulted Nekruj Ali with ballam in his chest and other accused assaulted him with lathis. PW1 further testified that when other co-villagers rushed to the place of occurrence, the accused ran away towards the house of accused Ala Uddin. When the villagers started rebuking the accused for their acts, the accused themselves set fire to accused Ala Uddin's house. PW1 deposed that his uncle Armuj Ali died on the spot and PW1 and his father and other injured were taken to the hospital.

8.2 Gulezar (PW1) also testified that the land cultivated by them on the day of occurrence was purchased jointly by his father and uncle about 16/17 years prior to the occurrence and that since the purchase their family members were cultivating the land.

8.3 In his cross-examination the PW1 admitted that accused Meyer Ali had filed a Cross Case against him and others alleging that informant's party had assaulted the accused and set fire to the house of the accused Ala Uddin.

9. PW2 Jaban Ali testified that on the day of occurrence at about 6 a.m. he was in his house and his brother Armuj Ali (deceased 1) and nephew Gulezar Ali (PW1) were cultivating their family owned land near his homestead. Hearing the cries PW2 came out and saw accused Meyer Ali, Pochai Mia, Kamar Uddin, Ala Uddin, Safar Ali, Jamal Uddin and others assaulting Armuj Ali with dao and ballam. He saw Meyer Ali dealing a ballam blow on the stomach of Armuj Ali and Saw Ala Uddin dealing a dao blow on the head of Armuj Ali. He also saw Gulezar Ali (PW1) being assaulted on his head by accused Forij Ali with a dao and Motor Mia dealing a dao blow possibly on the left hand of Gulezar Ali. The witness also saw accused Tamiz Uddin dealing a ballam blow in the navel portion of Gulezar Ali. When Nekruj Ali (deceased 2) raised an alarm, he too was assaulted by Meyer Ali, Kamal Uddin, Pochai Mia. Meyer Ali dealt a lathi blow on Nekruj Ali, Kamar Uddin dealt a ballam blow on the chest of Nekruj Ali and accused Pochai Mia also dealt a blow on Nekruj Ali either with a lathi

or ballam. While PW2 tried to save his father and nephew he was assaulted by accused Jamal Uddin, Meyer Ali, Kamar Uddin, Forij Ali. Meyer Ali dealt a lathi blow on PW2's head and Jamal Uddin gave a lathi blow on the left hand of PW2 and his little finger was fractured. PW2 testified to have received injuries on his head, left hand and right arm. The witness stated that as a result of the assault by the accused, Armuj Ali died at the spot-whereas Nekruj Ali died a few days later in the hospital. The witness testified that he received treatment for his injuries in the Silchar Medical College Hospital.

9.1 Jaban Ali (PW2) was re-examined by the prosecution during which, the Sale Deed (Ext. 2) executed by Surjya Bibi in favour of Nekruj Ali and himself was proved. This witness also proved the land's Jamabandi (Ext. 3) to indicate that the names of Jaban Ali and Nekruj Ali have been duly mutated in respect of the purchased land.

10. PW5 Tafazzul Ali corroborated the evidence of PW1 and PW2 on the assault made by the accused on the deceased and the injured victims. He stated that while he was performing "Namaz" in the nearby Mosque on hearing shrieks, he rushed to the nearby paddy field being cultivated then by Guleraz Ali (PW1) and uncle Armuj Ali (deceased 1). On arrival he saw the accused assaulting Guleraz and Armuj Ali with Dao, Lathi and Ballam and he saw accused Meyer Ali dealing a Ballam blow on the abdomen of the Armuj Ali and accused Ala Uddin dealing a Dao blow on the right hand and head of Armuj Ali. The PW5 saw accused Motor Mia dealing Dao blow on Gulezar Ali and also saw Safar Ali hitting Gulezar with the sharp side of a spade. The witness testified that when his father Nekruj Ali (deceased 2) rushed to protect the injured, accused Kamar Uddin dealt a ballam blow on the chest of his father (deceased 2) and Meyer Ali and Safar Ali also assaulted Nekruj Ali with lathis. He also saw PW2 Jaban Ali being assaulted with a Roller (wooden round type of lathi). It was testified further that when the co-villagers reached the spot and raised protest against the accused, all of them fled away towards the house of Ala Uddin. The PW5 stated that while Armuj Ali died at the place of occurrence, his father Nekruj Ali died in the hospital 4 days after the occurrence. He also stated that his father was able to speak while he was admitted in the hospital.

11. Ainul Uddin (PW3) is an independent eye witness of the occurrence. He testified that when Gulezar and Armuj Ali were ploughing their land, he saw all the accused come out of the house of accused Ala Uddin and saw them abusing Armuj Ali and Gulezar Ali. He tried to intervene but the accused threatened him to keep out. PW3 testified that he saw accused Meyer Ali with a Ballam, accused Ala Uddin and Safar Ali with Dao and Pochai Mia with a lathi assaulting Armuj Ali (deceased 1). Then he saw Gulezar Ali being attacked by accused Safar Ali and Motor Mia and Tamiz Uddin hurling a ballam blow on Gulezar Ali. He also saw Nekruj Ali (deceased 2) and Jaban Ali (PW2) being assaulted by the accused persons with Ballam and lathi. The witness testified that on hearing the alarm raised by the injured, many co-villagers arrived at the place of occurrence and then the accused ran to the house of Ala Uddin. PW3

helped to lift the injured but found that Armuj Ali died at the spot. Then the others were shifted to the hospital for treatment.

12. PW4 Samsul Alam was another eye witness who reached the P.O., on hearing the cries of the injured. He saw the accused persons attacking Armuj Ali and Gulezar Ali with dao, ballam and lathi. He corroborated the evidence of PW1, PW2 and PW5 on the assault made by the accused persons and also stated that on seeing the gathering of many co-villagers, all the accused ran away to the house of accused Ala Uddin.

13. PW 10 was the Investigating Officer, (I.O.,) of the case. On receipt of the information he visited the place of occurrence and found Armuj Ali lying dead in the paddy field. He held inquest and sent the dead body for post mortem examination. He also went to the Silchar Medical College Hospital and recorded the statement of the injured Gulezar and Nekruj Ali. The statement given to the I.O., by Nekruj Ali prior to his death was proved as Ext. 10 in the trial court.

14. From the evidence of the injured witnesses, i.e., PW1, PW2 and PW5 the assault by the accused persons on the injured witnesses and the 2 deceased, is clearly established. All the accused were armed with deadly weapons like ballam, lathi and roller and considering the nature of the injuries sustained by the deceased and the injured, the assault was clearly intended to cause death and serious injuries. The evidence of the injured witnesses on the assault by the accused corroborate each other and is further corroborated in all material particulars by the evidence of PW3 who is an independent eye witness. The medical evidence also support the version of the eye witnesses.

15. That apart, in the statement (Ext. 10) given by the deceased Nekruj Ali in the hospital before his death, it is clearly reflected that Nekruj Ali (deceased 2) saw accused Meyer Ali and accused Ala Uddin hitting the other deceased Armuj with a ballam and a dao respectively. The Exbt. 10 also recorded that Nekruj Ali (deceased 2) saw Gulezar (PW1) being assaulted by accused Kamal Uddin, Mukabir Ali with lathi, ballam etc. and Nekruj also saw Motor Mia hitting Gulezar (PW1) on the head with a spade. When Nekruj Ali tried to save his son Gulezar, some of the other accused hit the deceased-1 with lathis and accused Kamar Uddin stabbed him on the chest with a ballam. This statement of the deceased Nekruj Ali clearly corroborates the evidence given by the other eye witnesses.

16. The counsels appearing for the accused appellants submit that the incident arose out of a mutual assault when the accused were attacked by Gulezar (informant) and his group while the accused were cultivating the land owned by the husband of Patarunnessa who is the sister of accused Meyer Ali. But in support of such contention no evidence is adduced by the defence to show that the concerned land was owned or possessed by the accused or their family members. On the other hand the prosecution witnesses have proved by producing Sale Deed (Exbt. 2) and

the Jamabandi (Exbt. 3) that the land which the informant and his uncle were ploughing on the day of occurrence was owned by Jaban Ali (PW2) and Nekruj Ali (deceased 2).

17. As regards the cross case filed against the victims in this case launched by accused appellant Meyer Ali, it is pointed out by the learned Public Prosecutor that the accused in Sessions Case No. 56/97 have been acquitted by the learned trial court by its judgment and order dated 29.4.2003 by holding that the accused appellant Meyer Ali had foisted a false case as a counterblast to the present case (Sessions Case No. 118/95). We also find that Criminal Revision No. 284/09 filed by Meyer Ali challenging the acquittal order has been dismissed by this Court on 19.8.2009 by considering inter alia, the medical report of the injury sustained by accused Meyer Ali (informant in Sessions Case No. 56/97).

17.1 In view of the above verdict in the cross case, we have no reason to accept the appellant's contention that the informant's side were the aggressors. It is apparent that while Gulezar Ali (PW1) and Armuj Ali (deceased 1) were ploughing their own land, all the accused persons assembled with a preconceived mind and attacked the victims. On being accosted by the co-villagers who assembled at the place of occurrence and realizing the gravity of their act, the accused in a group ran away to the house of accused Ala Uddin and set the house on fire, to set up a desperate and false plea of private defence.

18. Individual roles in the assault by few of the accused appellants have already been noticed in the evidence. The only question that needs to be answered is whether the remaining accused would be liable u/s 149 of the IPC. The evidence shows that all the accused persons had assembled in the house of the accused Ala Uddin (who died during trial) and from his house, all of them proceeded to the place of occurrence. Each of the accused were armed with deadly weapons such as dao, ballam, roller and lathis and it is evident from the testimony of the eye witnesses that even after Armuj Ali (deceased 1) and Gulezar Ali (PW1) stopped cultivation on being threatened by the accused persons, they were mercilessly attacked by the accused. Therefore, the common object of the group was not confined to stopping cultivation by the victims but to commit grievous hurt and death of the other group. The nature of the injuries sustained by the deceased as well as the injured witnesses indicate that it was a murderous assault with deadly weapons by a pre-determined group. Evidence clearly shows that only when the co-villagers intervened in the matter and confronted the accused persons, they fled away in a group to accused Ala Uddin's house. That the accused were acting in concert is also revealed from the statements of the accused given u/s 313 of the Cr.PC. From the nature of the weapons carried, each member of the unlawful assembly knew the possibility of the victims getting grievously injured or killed and in such circumstances, we have no hesitation to hold that each of the accused being members of an unlawful assembly pursuing a common object are liable for acts of other accused and we find that

application of Section 149 of the IPC is clearly justified in the present case to sustain their conviction for offences u/s 302/326 of the IPC.

19. In view of above reasoning we find no merit in these appeals and the same are accordingly dismissed. Consequently the impugned judgment of the Sessions Court stands affirmed. Registry to send down the LCR.