Anutangla Vs State of Assam

Court: Gauhati High Court

Date of Decision: Jan. 2, 2008

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 313, 364
Penal Code, 1860 (IPC) â€" Section 302

Citation: (2008) 2 GLT 241

Hon'ble Judges: P.K. Musahary, J; Aftab H. Saikia, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Aftab H. Saikia, J.

1 The appellant, Arm Tangla having been"" convicted u/s 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.

1,000/-, in default, further rigorous imprisonment for another one year vide order dated 10.1.2002 passed by the learned Additional Sessions

Judge, Sonitpur in Sessions Case No. 92/2000, has preferred this criminal appeal from jail.

2. We have heard Mr. A. Roshid, learned Amicus Curiae on behalf of the appellant and Mr. K.C. Mahanta, learned Public Prosecutor

representing the State.

The prosecution case in brief is that--

An FIR was lodged by one Nabina Gowala, P.W. 2 on 29.7.1999 alleging that the accused Anu Tangla had assaulted his wife Anjana Tangla @

Charu (for short, "the deceased") by means of an axe causing her instant death on the spot. On the basis of such information, Jingia Police Outpost

registered the G.D. Entry No. 478 and forwarded the same to Behali Police Station wherein a case being Behali P.S. Case No. 112/1999 u/s 302

I.P.C. was registered.

3. During the course of investigation, the Investigating Officer, P.W. 6 visited the place of occurrence and made in-quest over the body of the

deceased. Ext. 2 is the inquest report. Thereafter deadbody was sent to Behali Hospital for conducting autopsy. During investigation the accused

produced a blood stained axe allegedly by which he had, caused the murder. The Investigating Officer seized the weapon. Ext. 3 is the seizure list.

4. After completion of the investigation, the Investigating Officer having found a prima-facie case, filed chargesheet against the appellant u/s 302

I.P.C. and forwarded to the court for trial being the case is exclusively triable by the Court of Sessions.

The learned Sessions Judge on the basis of the statement recorded u/s 364 Cr.P.C. and upon hearing both the parties framed charges against the

accused u/s 302 I.P.C. and the same was read over to the accused persons to which they pleaded not guilty and claimed to be tried.

5. During the course of trial, prosecution examined as many as 6 (six) witnesses including the informant (P.W. 2), the Doctor (P.W. 1) and P.W. 6

(the Investigating Officer) and the defence adduced none.

On appreciation of the deposition of all the witnesses and also on examination of the documents so exhibited by the prosecution, the trial court held

that the prosecution proved the offence of murder against the appellant beyond all reasonable doubt and accordingly convicted and sentenced the

appellant in the aforesaid manner.

6. Now, let us examine to what extent the prosecution could prove the accusation levelled against the accused during the course of trial.

Admittedly, in the instant case, there was no eye-witness and the entire prosecution case was based on circumstantial evidence.

7. At the very outset, let us look into the medical evidence so adduced by Dr. Sushil Kumar Saikia, P.W. 1. The Doctor while performing the

post-mortem on the deadbody of the deceased found the following injuries:

Injury--

1) Over right upper chest five number cut injuries are present. Two are big each about 3"" x 11/2Ã¯Â¿Â½0 as chest deep. Others three are 11/2 x 11/4

x muscle deep.

2) One big cut injury present at left posterior side of neck placed obliquely above 3"" x l"" x bone deep. It cut the great vessels of the neck on left

side.

3) One cut injury at right shoulder joint obliquely placed above 2"" x 1"" shoulder joint fracture at thorax. 1st, 2nd ribs of right side are fractured.

Flore was lacerated and the gravity was full of blood. Over cranium and spinal canal. 7th cervical vertebra fractured and spinal canal was injured.

Other organs found healthy.

8 The Doctor in his opinion stated that all injuries were anti-mortem and the cause of death was due to shock and haemorrhage as a result of those

injuries. In cross, the Doctor opined that the injuries might be caused by a ''dao'' like weapon.

9 P.W. 2, Sri Nabina Gowala in his deposition clearly stated that when he went to the place of work, being a tea garden worker, he heard that a

murder had taken place and he heard from one Kami Tangla that the accused had cut his wife Manjula to death. Accordingly, he informed the

Manager of the tea garden and went to see it. Having seen through the door of the house of the deceased, he left for police station to inform the

same. Ext. 1 is the ''Ejahar''.

In cross, he asserted that as he did not know how to read or write, the ejahar was written by another person and he put his signature thereon.

10. P.W. 3, Sri Ajit Nahak deposed that in the morning, having seen a gathering in front of the accused person''s house, he went there to see it.

When he enquired about it, he heard people saying that the accused had killed his wife with an axe. The accused showed the axe and it was blood

stained. Thereafter, he left the place and again came when he heard about police arrival.

In cross, he told that he saw people gathered at the accused person''s house including Sardar Nabina Gowala, Jogen, Kanu Tangla. This witness in

his cross, clearly told that the accused did not tell him anything. He heard the people talking among themselves. He reiterated that accused had

shown the blood stained axe when Nabina Gowala, P.W. 2 was also present.

11. P.W. 4, Sri Chitta Patnaik also testified that on that morning he saw people gathered before the house of accused person, who was sitting in

the courtyard. He saw the dead body of the deceased and an axe lying nearby the deadbody. He saw cut injury on the neck of the deceased. The

accused told him and Nabina, ""I have cut Charu with an axe"". According to him, it was Nabina, P.W. 2, who lodged an ejahar. He told that police

interrogated him.

In cross, he told that he saw 20/30 people including accused person''s daughters and sons were present in the place of occurrence. According to

him, the accused person confessed before the public that he had cut his wife.

12. P.W. 5, Sri Babul Nahak deposed that going to the place of occurrence, he saw the deadbody of the appellant''s wife which was covered with

a cloth. Asked by the public, the accused person informed that he had killed his wife with an axe. Nabina Gowala, P.W. 2 had lodged the ejahar.

13. In cross, he deposed that he saw Nabina Gowala, Ajit and Chitta were present amongst the police as well as public gathered at the place of

occurrence. Reiterating his deposition in chief, this witness stated that having been asked by the public, the accused confessed in presence of the

police that he had killed his wife and at that time Nabina, Ajit and Chitta were present there.

14. P.W. 6, Sri N.C. Deka, the Investigating Officer and I/C of the Borghat Police outpost in his deposition stated that during investigation the

accused produced a blood stained axe with which he had caused the murder and seized the axe vide Ext. 3.

In cross, he testified that they did not have the blood stained axe examined by the FSL. It was also not mentioned in the diary by giving what

statement the accused had produced the axe. 15. On examination u/s 313 Cr.P.C, the accused categorically denied all the questions put to him.

Having meticulously evaluated and appreciated the testimony of all the witnesses above mentioned including the doctor, it appears that the

deceased was inflicted with as many as 7 injuries. Out of which 5 injuries were found on chest and one fatal injury on her neck. So far the evidence

of P.W. 4 is concerned, he was categorical in stating that the accused made "extrajudicial confession" to him and P.W. 2 i.e. Nabina Gowala.

Surprisingly, P.W. 2 did not mention at all about such "extrajudicial confession" made to him.

16. Rather from perusal of his deposition, it reveals that the said witness heard from one Kanu Tangla that the accused cut his wife Manjula to

death. Significantly, the prosecution did not examine the said Kanu Tangla. It was reiterated by that witness, in his cross, that even this witness

denied the suggestion in his cross to the effect that it was not a fact that Kanu Tangla did not inform him about the incident. However, for the best

reason known to the prosecution, it preferred not to examine Kanu Tangla.

17. Coming to the deposition of PW 3, it is seen that this witness in his deposition told that they heard people saying the accused killed his wife.

But he did not mention any other person"s name who told him that the accused made this extra judicial confession, except Nabina Gowala, Jogen

and Kanu Tangla. As already noted above, Kanu Tangla was not examined, even Jogen was also kept out as prosecution witness. P.W. 3 was

also categorical in his press that accused did not state to him anything.

18. However, according to him, in his cross in the morning accused had shown him the blood stained axe and on that time, the Nabina Gowala

was present. If, we perused the PW 2"s testimony, Nabina Gowala did not state anything about the production of axe by the accused either in his

Chief or in cross.

19. As regards the deposition of PW 5, he also narrated the same story saying that when asked by the public, the accused told that he killed his

wife. He refrained from giving any name amongst the public who told to him such "extrajudicial confession".

20. Admittedly, there was no eye witness to prove the prosecution case and circumstantial evidence was the sole basis of conviction in the case in

hand. In order to arrive at the findings for conviction of the appellant u/s 302 IPC and to award subsequent sentence of life imprisonment, the

learned Judge primarily based on the testimony of all the witnesses so discussed hereinabove to hold that the prosecution could successfully prove

the case against the appellant on circumstantial evidence.

21. The law on circumstantial evidence has already been settled. In a case of Sharad Birdhichand Sarda Vs. State of Maharashtra, the Apex Court

in paragraph-152 laid down 5 golden principles so as to constitute the panchsheel of the proof of a case based on circumstantial evidence.

Paragraphs 151, 152 and 153 quoted as under:

151. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof

required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant Vs.

The State of Madhya Pradesh, This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for

instance, the cases of Tufail v. State of U.P., (1969) 3 SCC 198 and Ram Gopal Vs. State of Maharashtra, . It may be useful to extract what

Mahajan, J. has laid down in Hanumant"s case (at pp. 345-46 of AIR) (supra):

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be

drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the

accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the

one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a

conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been

done by the accused.

152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be

fully established:

(1) The circumstances from which the con clusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a

grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao

Bobade and Another Vs. State of Maharashtra, where the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance

between "may be" and "must be" is long and divides vague conjectures from sure conclusions.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable

on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a con-clusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the

accused and must show that in all human probability the act must have been done by the accused.

153. These five golden principles, if we may say so, constitute the punchsheel of the proof of a case based on circumstantial evidence.

22. Having scrupulously analyzed the deposition of all those witnesses, we are of the considered view that the evidence of all those witnesses were

full of contradictions and inconsistencies to rope in the appellant for committing the offence of murder of his wife so as to attract the conviction u/s

302 IPC. We do not find that the chain of evidence so complete as to indicate that in all human probability the act must have been done by the

appellant and the circumstances adduced were of conclusive nature and tendency. Accordingly, having regard to Sharad"s case (supra), we are of

the firm view that the appellant is entitled to get the benefit of doubt.

23. In view of what has been discussed, stated and observed above, this, court is of the view that the impugned conviction and sentence cannot be

tenable and accordingly the same stands quashed and set aside.

Consequently, it is ordered that the appellant be set at liberty forthwith, if he is not otherwise wanted in any other case.

24. Before parting with the case, we would like to put on record our appreciation to Mr. A. Roshid for his valuable assistance rendered in arriving

at a decision above-recorded in this case as Amicus Curiae. Accordingly, it is ordered that he is entitled to professional fees which is quantified at

Rs. 5,000/-

In the result, appeal succeeds and stands allowed. Send down the LCR forthwith.