(2011) 03 GAU CK 0062

Gauhati High Court (Agartala Bench)

Case No: Criminal Appeal No. 05 of 2007

Sri Upendra Debbarma @ Gablong		APPELLANT
	Vs	
The State of Tripura		RESPONDENT

Date of Decision: March 25, 2011

Acts Referred:

- Arms Act, 1959 - Section 27
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 148, 149, 302
- Unlawful Activities (Prevention) Act, 1967 - Section 10, 13

Hon'ble Judges: Utpalendu Bikas Saha, J; Iqbal Ahmed Ansari, J

Bench: Division Bench

Advocate: Somik Deb and B. Dutta, for the Appellant; D. Sarkar, Public Prosecutor, for the Respondent

Judgement

I.A. Ansari, J.

This is an appeal against the judgment and order, dated 17.05.2005, passed, in Case No. Sessions Trial 46 WT/A) of 2004, by the learned Sessions Judge, West Tripura, Agartala, convicting the accused-Appellant under Sections 302 and 148 of the Indian Penal Code, Section 27 of the Arms Act and Section 13 of the Unlawful Activities (Prevention) Act, and sentencing the accused-Appellant to suffer, for his conviction u/s 302 IPC, rigorous imprisonment for life and pay a fine of Rs. 5,000/- and, in the event of default to pay the fine, suffer rigorous imprisonment for three months, and to suffer, for his conviction u/s 148 IPC, rigorous imprisonment for three years and to pay a fine of Rs. 200/- and, in the event of default to pay fine, suffer further imprisonment for a period of 15 days, and to suffer, for his conviction u/s 27 of the Arms Act imprisonment for life with a fine of Rs. 5000/- and, in the event of default to pay fine, to suffer further imprisonment for a period of three months, and to suffer, for his conviction u/s 13 of Unlawful Activities (Prevention) Act, rigorous

imprisonment for a period of two years, all the sentences have been directed to run consecutively.

2. We have heard Mr. Somik Deb, learned Counsel for the accused-Appellant, and Mr. D. Sarkar, learned Public Prosecutor, Tripura.

3. The prosecution''s case is, in brief, thus:

(i) On 31.8.2001, at about 4.35 A.M., 40/45 armed extremists, belonging to NLFT, which is a banned organization, came to the house of the informant (PW 1) and asked Suku Debbarma to arrange food for them. Being frightened, Suku Debbarma arranged food for the extremists. After having their food, when the extremists were leaving, they took with them, at the time of their departure, Suku Debbarma, Sonai Debbarma and Bishu Debbarma to Kashidas para under the pretext that their commander desired to meet Suku Debbarma, Sonai Debbarma and Bishu Debbarma. However, after taking Suku Debbarma, Sonai Debbarma and Bishu Debbarma, in the manner as indicated hereinbefore, to a place called Kashidas Para, the said three persons were shot at by AK-47 rifles by the present Appellant, Upendra Debbarma alias Gablong, and his associate, Sankar Debbarma (since absconder). Some of the members of the family of the three victims witnessed the occurrence. Suku Debbarma and Sonai Debbarma died on the spot, but Bishu Debbarma survived and he told those, who had arrived at the place of occurrence on hearing the sound of bullets being fired, that Upendra Debbarma alias Gablong and Sankar 4 Debbarma had shot them by their firearms. In course of time, severely injured Bishu Debbarma also succumbed to his injuries.

(ii) On receiving the information, as regards the occurrence, to the effect that some extremists had attacked and killed three persons at Kashidaspara, the In-charge of Kashidas Para Police Outpost, which falls under Jirania Police Station, made a General Diary entry, being G.D. Entry No. 737, dated 31.8.2001, in this regard. The Officer-in-Charge, Kashidas Para Police Outpost, who took up the investigation, rushed to the place of occurrence, held inquest over the dead bodies and sent the dead bodies for post mortem examination. Suku Debbarma''s younger brother, Budhu Ram Debbarma (PW 1), lodged a written information with the Officer-in-Charge, Jirania Police Station. Based on this written information and treating the same as the F.I.R., Jirania P.S. Cases No. 82/2001 was registered. At a later stage, when Bishu, too, succumbed to his injuries, inquest was held on his dead body too and the said dead body too was sent for post mortem examination. Post mortem examinations were conducted on the said dead bodies. On completion of investigation, police laid charge-sheet under Sections 148/149/302 IPC read with Section 27 of the Arms Act and Sections 10/13 of the Unlawful Activities (Prevention) Act.

4. During the trial, charges under Sections 148 and 302 read with Section 149 IPC were framed. Charges were also framed u/s 27 of the Arms Act and Section 13 of the

Unlawful Activities (Prevention) Act. To the charges so framed against the accused-Appellant, he pleaded not guilty thereto and claimed to be tried.

5. In support of their case prosecution examined as many as 12 witnesses. The accused-Appellant was, then, examined u/s 313 Code of Criminal Procedure and in his examination aforementioned, he denied that he had committed the offences alleged to have been committed by him, the case of the defence being that of total denial. No evidence was, however, adduced by the defence.

6. Having found the accused guilty of the offences charged with, the learned trial Court convicted him accordingly and passed the sentences against him as indicated above. Hence, this appeal by the convicted person.

7. On hearing the appeal at some length, we find that the present one is a case, wherein three persons are alleged to have been killed by shooting them with fire-arms. However, though the dead bodies, according to the prosecution''s case, were subjected to post mortem examinations, the doctor who had conducted the autopsy was not examined, in the Court, as a witness, because of the fact that he had left the State. Apart from the fact that the doctor had not been examined, even the findings recorded in the post mortem report and the opinion, as regards the cause of death of each of the three persons, was not proved by the prosecution. In such circumstances, it is, to our mind, wholly unsafe to hear and decide the appeal on merit. Hence, the said infirmity in conducting the prosecution must be removed so that this Court can reach a correct decision in this appeal. At the same time, we are also conscious of the fact that the alleged occurrence took place as far back as in the year 2001 and almost 10 years have already left since then. It may be noted that even if the prosecution had opted not to examine the doctor, who had conducted the post mortem examinations, it was the duty of the learned trial Court, in the facts situation of the present case, to determine the causes of death and, for this purpose, to bring, at least, the findings of the doctor on the record and his opinion, as regards the cause of death of each of the said three persons.
Situated thus, we are of the view that the appeal, if heard and decided on merit without bringing the medical evidence on record, may cause serious prejudice to either party.

8. In view of the above and in the interest of justice, this appeal is partly allowed. The impugned conviction of the accused-Appellant and the sentences passed against him are hereby set aside and the case is remanded to the learned trial Court for bringing, on record, the medical evidence relating to the causes of death of each of the said three persons and to further examine the accused-Appellant as may be required u/s 313(1)(b) Code of Criminal Procedure The trial shall be completed, in accordance with law, within a period of eight weeks from the date of receipt of the L.C.R. by the learned trial Court.

9. We have refrained ourselves from expressing any opinion on the veracity or otherwise of the evidence adduced by the prosecution inasmuch as any observation, in this regard, if made, by this Court, at this stage, is likely to cause prejudice to either party.

10. Before parting with this appeal, it is also made clear that the accused-Appellant, who is in custody, shall be retained in custody until the time the judgment ,in the case, is pronounced by the learned trial Court.

11. Let the L.C.R. be sent forthwith.

12. Furnish copies of this order to the learned Public Prosecutor and the learned Counsel for the accused-Appellant.