

Sri Firoz Rajput, S/o.Sri Bidadhar Rajput, R/o Changmukhi T.E., P.S.Jakhalabandha, Dist.Nagaon, Assam Vs State of Assam

Court: Gauhati High Court

Date of Decision: March 13, 2012

Hon'ble Judges: A.K.Goel, C.J. and P.K.Saikia, J

Bench: Division Bench

Advocate: Miss Rita Devi, Amicus Curiae, For the Respondent : Mr K.A. Mazumdar, Addl.PP Assam., Advocates appearing for Parties

Judgement

P.K.Saikia, J.

In this appeal, the judgment and order dated 27.04.2009 passed by the learned Addl. Sessions Judge, FTC, Nagaon, in

Sessions Case No.53(N)/06 under Section 302 IPC convicting the accused/appellant under Section 302 IPC and sentencing him to suffer life

imprisonment and a fine of Rs.1,000/ in default to undergo imprisonment for two months for the offence under Section 302 IPC is put to challenge

in this appeal.

2. Being dissatisfied with and aggrieved by the aforesaid judgment and order, the accused/appellant preferred this Jail appeal on the grounds,

stated in the memo of appeal.

3. The facts necessary for disposal of the present appeal are that on 05.10.2006, one Shri Amrit Munda of Sakmuthi Tea Garden under

Jakhalabandha Police Station, in the District of Nagaon, lodged an FIR with the O/C of Jakhalabandha Police Station alleging that on that day at

about 6:00 PM, Sri Firoz Rajput, the accused/appellant killed his brother Suraj @ Sri Charai Munda in his house with a dao while he was asleep.

Having killed his brother, the accused went on declaring the people gathered at Bamuni Tinali Bazar and at other places that he had killed aforesaid

Suraj Munda.

4. Having received the FIR, the O/C Jakhalabandha Police Station registered a case under Section 302 IPC vide Jakhalabandha P.S. case

No.107/06 and ordered one Sri Dhaniram Bharali, S.I. of Police to investigate the case. Being so entrusted with the investigation, Sri Dhaniram

Bharali visited the place of occurrence, found the dead body of Suraj @ Charai Munda at his own house, arrested the accused person and

recovered a dao on being shown by the accused person.

5. He also held an inquest on the dead body and sent the same to the hospital at Nagaon for post mortem examination. In due course, he collected

the post mortem report, did other needful and on completion of the investigation, he submitted a charge sheet under Section 302 IPC and

forwarded the accused to the Court to stand his trial there.

6. The learned Magistrate before whom the charge sheet was so laid committed the case to the Court of Sessions at Nagaon as the offence under

Section 302 IPC is exclusively triable by the Court of Sessions. The learned Session Judge, Nagaon on the receipt of the case on commitment,

transferred the same to the file of the learned Additional Sessions Judge, FTC, Nagaon for disposal in accordance with law.

7. The learned Additional Sessions Judge, FTC, Nagaon heard the parties and thereafter framed charge under Section 302 IPC against the

accused person and the charge, so framed, on being read over and explained to the accused person, he pleaded not guilty and claim to be trial.

The prosecution side examined as many as 10 witnesses including the I/O and they were cross examined by the accused at length.

8. The statement of the accused person under Section 302 IPC was recorded. The accused plea was of total denial. He, however, declines to

adduce any evidence. The learned Trial Court after hearing the arguments advanced by learned counsel for the parties, came to the conclusion that

the prosecution has proved the charge brought against the accused person beyond all reasonable doubt and as such it convicted the accused of

offence under Section 302 IPC and sentenced him to punishment aforesaid. It is this judgment which has been challenged herein this appeal.

9. The learned Amicus Curiae appearing on behalf of the accused/appellant contends that the judgment of the trial court suffers from several

infirmities. They are, (i) the alleged extra judicial confession are not trustworthy for being inconsistent with one another, (ii) some important

witnesses have not been examined and (iii) the case under consideration, despite being premised on circumstantial evidence is not founded on

circumstances which when read together do not lead to irresistible conclusion that the accused and none else is the author of crime under

consideration.

10. On all those counts, the learned Amicus Curiae urges that the judgment of the Trial Court is not tenable in law and learned Amicus Curiae

therefore submits this Court to set aside the judgment of the trial court on acquitting the accused of the offence he was charged with.

11. On the other hand, Mr K.A. Mazumdar, the learned Addl. PP appearing for the State of Assam, contends that the judgment of the Trial Court

is based on well established facts on record and it was passed keeping the relevant laws which hold the fields in question in view and as such, such

a judgment does not warrant any interference from this Court of appeal and he accordingly urges this Court to affirm the judgment of the Trial

Court instead.

12. We have heard the arguments in advanced by the learned counsel for the parties. However, before appreciating the arguments so advanced by

the parties, we find it necessary to reproduce the evidence of witnesses in a phase manner. On a very careful perusal of the record, we have found

that there is no eye witness to the incident in question.

13. Being so, the prosecution has produced before the Court some witnesses, such as PW 1, PW 3, PW 4, PW 6 & PW 7 who claimed that the

accused confessed to killing the deceased on the evening in question and the accused made such confession before them. On the other hand, some

other witnesses are also produced before the Court who according to the prosecution, claims to have witnessed the accused helping the Police in

retrieving the dao, the weapon of offence from a place where it was concealed, they are PW 1 & PW 10.

14. On the other hand, Medical Officer who has reportedly conducted the post mortem examination on the body of the deceased was Dr

Sarbeswar Bora and he was examined as PW 9. But before we reproduce the evidence of other witnesses, we find it necessary to reproduce the

evidence of Medical Officer who has done the post mortem examination on the body of the deceased at Nagaon Civil Hospital on 06.01.2006.

15. According to him (PW 9), on 06.10.2006, he was posted at Bimola Prasad Chaliha Civil Hospital, Nagaon as Sub Divisional Medical &

Health Officer. On that day, he performed the post mortem examination on the body of one Feroz Munda, aged about 22 years on Police

requisition and found the followings:

1) The condition of the subject stout. Rigor mortis present.

2) There are three number of sharp cutting injuries e inch length and muscle deep each on right side of the neck.

3) The carotid artery cut.

Injury anti mortem in nature.

The Doctor opined that the cause of death was shock and hemorrhage as a result of injury sustained by the deceased.

Exhibit 6 is the post mortem report.

16. In his cross examination, he has stated that he did not mention in his report anything about the age of injuries found in the body of the

deceased. However, his report coupled with inquest report Ext.3 clearly established that the accused died a homicidal death having been subjected

to three cut wounds of extremely serious nature.

17. So situated, let us consider the testimonies those witnesses who claimed that the accused confessed to them that he had killed the brother of

the informant on the day in question. One of them is PW 1 Sri Naren Kurmi who is a tea garden employee. According to him, on the fateful

evening at about 4/4:30 PM, the incident in question occurred. At that time, he was in market. Precisely at that time, the accused came to him and

told him that he killed Charai Munda on inflicting as many as three dao blows on him. He also advised him to call the Police.

18. Hearing all those, he took the accused into his house. In the meantime, he also informed the Police as requested by the accused person. On

arrival of the Police, he in the company of Police and the accused went to the house of the deceased and found the body of deceased lying inside

his house. They also noticed three cut wounds on the body of the deceased. Police called the brother and the family members of the deceased at

the place of occurrence.

19. Police seized the dao in his presence on being produced by the accused himself from a place where it was concealed. Police seized the same

on the basis of seizure list Ext.1. In his cross examination, he has stated that Kalia Das is a man who resides at a place adjacent to the place of

occurrence, that he did not see the accused killing the aforesaid person.

20. PW 3 Sri Kalia Das deposes that one day in the evening, he heard hue and cry raised by the accused Firuz Rajput. Soon thereafter, Firuz

came to his house and told him that he finished Charai Munda. He also called Kalia Das to come out of his house but out of fear, he did not come

out of his house. After some time, Police arrived there. In his cross examination, he has also stated that when the accused came to his house and

reported him about the alleged incident, his wife Damayanti Das was there.

21. PW 4 Damayanti Das is the wife of Kalia Das. According to her, one day, when she and her husband were in their house, the accused

suddenly came to their courtyard and called her to come out of her house. When she came out of her house, the accused told her that he finished

Charai Munda, she also saw a dao in his hand. He also asked her husband to come out of the house, however, she persuaded the accused to

leave the place. In her cross examination, she denied the suggestion that she did not state before the Police that Firuz told her to come out of her

house, and that the accused told her that he finished Charai Munda.

22. PW 5 Sri Amrit Munda, also a tea garden employee, deposes that the alleged incident occurred on 05.10.2006. In the evening on that day, he

was in his quarter. Precisely at that time, a person came to him on being sent by Damayanti Das (PW 4) who told him that Charai Munda was

killed by Firuz Rajput. On receipt of the information, he rushed to 12 Danga where his house situated. On arriving there, he saw his brother lying

dead inside his house. He saw two cut injuries on the neck of the deceased.

23. Police also arrived at the place of occurrence soon thereafter. On that day itself, he lodged an FIR with the Police. The dead body was

immediately shifted to Jahkalabandha P.S., where from it was sent to Nagaon Civil Hospital for further medical examination. In his cross

examination, he has stated that he lodged the FIR soon after the alleged incident. The suggestion that he did not tell the Police that the incident in

question occurred in his house was denied by PW 5.

24. PW 6 Sri Nipen Das, a carpenter, deposes that on the fateful evening, he was in his furniture shop. Precisely at that time, the accused came to

him and told him that he killed Charai Munda. Hearing this, he felt frightened and therefore, he immediately left his shop. In his cross examination,

he has stated that accused was seen confessing his guilt to the adjacent shop keepers as well.

25. The other witnesses on whom the prosecution has relied on are PW 7 Birsha Munda a teacher by profession and Shankar Mondal who is a

shop keeper. According to PW 7, on the fateful day in the evening, he was in the house of his relative. While he was still in the house of his relative,

Amrit Munda (PW 5) came to him and told him that he needs to accompany the former to a place where there the Police waiting for him.

Accordingly, he accompanied Amrit Munda to such place and found Police there waiting for them.

26. As they arrived such place, Police also requested them to accompany to a place where a man had been killed on that evening. Being so

requested, they went to the house of Amrit Munda where alleged incident took place little before their arrival at such place. On arriving such place

they found a man lying dead there with a cut wounds on his neck. The suggestion that he did not state before the Police that Amrit Munda

requested him to go to the place of occurrence was denied by him.

27. This brings us to the testimony of I/O of the case who is Dhaniram Bharali (PW 10). According to him, on 05.10.2006, the O/C of

Jahkalabandha P.S. received the FIR (Ext.1) from one Amrit Munda. After receipt of the FIR, he registered a case thereon and ordered the PW

10 to investigate the case. Accordingly, he visited the place of occurrence, seized the dao on being produced by the accused person on the

strength of (Ext.2). He also conducted an inquest on the dead body, prepared a report in this connection (Ext.3). He also drew a sketch map on

the place of occurrence (Ext.5) and sent the dead body to the Bimola Prasad Chaliha Civil Hospital, Nagaon for post mortem examination.

28. In due course, he collected the post mortem examination (Ext.6) and on completion of the investigation, he submitted a charge sheet under

Section 302 IPC against the accused person. In his cross examination, he has stated that there was no house in the close vicinity of the place of

occurrence. However, the house of one Sri Naren Kurmi (PW 1) is situated at some distance from the place of occurrence. PW 8 in his evidence

stated that he did not see the alleged incident, but came to know from others that a man was killed.

29. The witnesses whose testimonies are yet to be reproduced are PW 2 Sri Mahavir Mavabhai and PW 8 Sri Shankar Mondal. They are

however not eye witnesses to the incident.

30. Above being the evidence on record, let us see how far such evidence makes out the charge brought against the accused person. We have

already found that nobody seen the alleged incident and hence the prosecution heavily relies on the extra judicial confession which the accused

allegedly made before some of the witnesses mentioned hereinbefore. This apart, the prosecution has also relied on some other circumstances to

corroborate the contents of the confessional statement reportedly rendered by the accused person.

31. We may note here that law on the extra judicial confession as far as reliability is concerned is well laid down. In that connection, we may

profitably peruse the decision of Hon"ble Supreme Court of India in the case of Gura Singh Vs. State of Rajasthan reported in (2001) 2 SCC

wherein the Hon"ble Supreme Court held that:

Ã~Ã½(i) Extra judicial confession, if true or voluntary, it can be relied upon by the court to convict the accused for the commission of the crime

alleged. Despite inherent weakness of extra judicial confession as an item of evidence, it cannot be ignored when show that such confession was

made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. That

the evidence in the form of extra judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence.

Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made

and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. It is not open to the

court trying the criminal case to start with a presumption that extra judicial confession is always a weak type of evidence. It would depend on the

nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession.

Apex Court in the case of Kishor Chand Vs. State of H.P. reported in (1991) 1 SCC 286 expressing similar view held that:

Unambiguous extra judicial confession possesses high probative value force as it may emanates from the person who committed the crime and

is admissible in evidence provided it is free from suspicion and suggestion of any falsity.

Our own High Court in a case reported in 2005 (3) GLT 604 held that:

(i) Extra judicial confession, if true and voluntary, can be relied upon by the Court to convict the appellant/accused for the commission of the

crime alleged. It is now well settled position of law that, if extra judicial confession was made before a person who has no reason to state falsely

and to whom it is made in the circumstances which tends to support the statement, cannot be ignored and also that evidence in the form of extra

judicial confession made by the accused to a witness cannot be always termed to be a tainted evidence. Corroboration of such evidence is

required only by way of abundant caution.

32. Above being what law is on extra judicial confession, let us see if prosecution is found successful in establishing its claim that the accused did

make a confession before the witnesses aforesaid and if so, whether confession so made was voluntary and truthful. On perusal of the record, we

have found that there is undisputable evidence on record to show that the accused did make confession before the PW 1 admitting that he killed

Charai Munda on inflicting three dao blows on him. He also made similar confession before PW 3, PW 4, PW 6 & PW 7 as well.

33. There is absolutely nothing on record to show that the evidence so rendered by those PWs on the point of the accused making a confession

before them admitting his guilt was not truthful. Nor was there any evidence to show that the accused made such confession under some kinds of

compulsion, influence or allurement. Rather, the evidence rendered by PWs aforesaid which are found to be cogent consistent and clear on all

material points forcefully demonstrate that the accused made such a confession on his own and such confession is truthful. Those revelations are

clear testimonies to the fact that on the evening in question, the accused killed Charai Munda at his house subjecting him to as many as three dao

blows.

34. The projection so made by PW 1, PW 3, PW 4, PW 6 & PW 7 finds unfettered corroboration from the averments made in the FIR as well. If

the FIR which has been lodged soon after the alleged incident, which itself guarantees the genuineness of the prosecution case to a great extent also

reveals that the accused confessed to Sri Naren Kurmi (PW 1) and some other people in Bamburi Bazar to have killed Charai Munda on inflicting

wounds on him with dao and that too in his own house.

35. Most of the witnesses" aforesaid claims that the accused admitted to have killed the deceased on planting three dao blows on him. On the

other hand, the Medical Officer who conducted the autopsy on the body of the deceased found three huge cut wounds and such wounds

extinguished his life. Such unchallenged testimony of Doctor is found to be quite consistent with the testimony of prosecution witnesses on the point

of site of wounds, nature thereof and weapon used in committing such wounds. The Testimony of the Doctor therefore becomes one more seal of

confession being made by the accused being truthful and prosecution case being premised on such truthful evidence.

36. The Investigating Officer, in his evidence has stated that during the course of investigation, he seized one dao on being produced by the

accused person. There is nothing on record to show that the claim, so made by the Investigating Officer (PW 10) is not worth reliable for any

reason whatsoever. Rather such claim of Investigating Officer finds corroboration from the averments made in seizure list Ext.2 as well as testimony

rendered by PW 1.

37. The recovery of dao soon after the alleged incident and that too on being produced by the accused, in the facts and circumstances of the

present case, clearly demonstrates that the dao recovered was the dao which was used in committing the crime under consideration which

occasioned the death of deceased on the evening of 05.10.2006.

38. When one considers the above revelations in their totality there cannot be an escape from the conclusion that the accused did make a

confession which is voluntary and which was truthful. Such confession statement only reveals that the accused and none else was the author of the

crime under consideration. No other conclusion is found compatible with materials on record.

39. The defence has challenged the prosecution case on the counts that extra judicial confessions were not reliable, that nonexamination of some of

the important witness is fatal to the prosecution case and that circumstances, proved, do not establish a chain of events without any break

anywhere leading to the conclusion that the accused and none else committed the crime under consideration.

40. Our foregoing discussion has now established that none of the above allegations stands to reason and same needs no further reiteration here.

Suffice it to say that those allegations slip into oblivion without leaving any scar whatsoever on the prosecution case.

41. On the compactus of above discussion, we are to hold that the prosecution has proved the charge under Section 302 IPC leveled against the

accused person beyond all reasonable doubt and as such, he is liable to be convicted and punished in accordance with law and learned Trial Court

having punished aforesaid committed no wrong whatsoever.

42. In the result, we unhesitatingly uphold the judgment to the Trial Court. Consequently, this appeal stands dismissed.

42A. We appreciate the assistance rendered by the Miss Rita Devi, learned Amicus Curiae and direct that an amount of Rs.3500/ be paid to Miss

Rita Devi, as his remuneration by the State Legal Services Authority.

43. Return the LCR.

44. In view of the provision prescribed by Section 357(A) Cr.P.C. the victim or his/her dependents are entitled to get compensation for

rehabilitation in appropriate cases. Therefore, for the sake of brevity and in the light of our discussions, made in Criminal Appeal No.93(J)/2005

(disposed on 22.12.2011), with regard to the victim compensation as provided by Section 357(A) Cr.P.C., we make the following directions:

1. As an interim measure an amount of Rs.50,000/ shall be deposited by the State Government with the District Legal Services Authority of

Nagaon District within a period of two months from this date. The District Legal Services Authority, on receipt of the said money, shall make an

enquiry to ascertain as to whether, there is dependent(s), who suffered loss and injury as a result of death of the deceased and if such dependant(s)

or legal representative(s) need any rehabilitation.

2. Upon such enquiry, if it is found that the dependent(s), if any, need rehabilitation, then the District Legal Service Authority shall initially release

the said interim amount and thereafter direct payment of adequate compensation, as may be prescribed by the scheme to the prepared by the State

Government.

3. It is made clear that if the District Legal Services Authority, after due enquiry, arrives at the findings that there is no dependent(s) or that the

dependant(s) of the deceased/victim does not required any rehabilitation, then the District Legal Services Authority, shall refund the said amount of

Rs.50,000/ without delay, in favour of the State Government.

45. Let a copy of this judgment and order be furnished to Mr K A Mazumdar, learned Additional Public Prosecutor and the Chief Secretary to the

Govt. of Assam, for doing the needful.