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Md.Hasmat Ali, S/o.Late Saja Seikh Vs State of Assam

None

Court: Gauhati High Court

Date of Decision: March 21, 2012

Citation: (2012) 03 GAU CK 0048

Hon'ble Judges: Ujjal Bhuyan, J

Bench: Single Bench

Advocate: By Advocates : Mr. B.M. Choudhury, Adv. Mr. S. Choudhury, Adv. By Advocate : Mr. B.S. Sinha, Addl. P. P, Assam, Advocates appearing for Parties

Judgement

1. This appeal is directed against the judgment and order dated 29012007 passed by the learned Additional Sessions Judge (FTC), Darrang,

Mangaldai in Sessions Case No. 21 (DMFT)/2003 convicting the three appellants and another under Section 304(1)/34 IPC and sentencing each

of them to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1000/, in default, to undergo rigorous imprisonment for another

three months and further convicting the appellant No. 1 and another under Section 447 IPC and sentencing them to pay a fine of Rs. 300/ and in

default, to undergo simple imprisonment for one month.

2. One Md. Ilias Ali lodged a first information before the Kalaigaon Police Station naming the appellants and another as accused in the following

order:

(1) Md. Hasmat Ali,

(2) Md. Sablus Ali,

(3) Md. Karim Ali,

(4) Md. Tazmul Ali.

3. The informant alleged that in the morning of 11042000 at about 6.30 am, while his son Giasuddin Ahmed and nephew Asanullah were ploughing

their land, the accused persons armed with iron rod trespassed into the paddy field and attacked both of them. It was alleged that the accused No.

2 inflicted severe injury on Giasuddin Ahmed"s head by hitting him with an iron rod. The accused No. 2 also inflicted punches and blows on

Giasuddin. When the two boys raised a hue and cry, the villagers came to the place of occurrence whereupon the accused persons fled from the

place.

4. On receipt of the said first information, Kalaigaon Police Station Case No. 34 of 2000 was registered under Section 447/326/307/34 IPC. The

injured Giasuddin Ahmed succumbed to his injuries while undergoing treatment at Guwahati Medical College Hospital. Therefore, Section 302

IPC was also added. The police investigated the case and after completion of the investigation, submitted chargesheet against the accused persons

under Section 447/326/307/34 and Section 302 IPC. On completion of the procedural formalities, the case was committed to the Court of

Sessions for trial. The case was thereafter registered as Sessions Case No. 21(DMFT) of 2003.

5. The learned Adhoc Additional Sessions Judge, Darrang, Mangaldai framed the charge against the accused persons under two heads, firstly, for

criminal trespass into the land of the informant i.e. commission of an offence punishable under Section 447/34 IPC and for committing murder of

Giasuddin Ahmed, thereby committing an offence punishable under Section 302/34 IPC. The charges were read over and explained to the

accused persons to which they pleaded not guilty and claimed to be tried.

6. To prove the charge, the prosecution examined as many as twelve witnesses. The accused persons adduced the evidence of seven witnesses in

their defence. To arrive at a just decision, the learned trial Court also recorded the evidence of eight persons as Court witnesses.

7. On consideration of the evidence adduced and after hearing the parties, the learned Court below came to the conclusion that it was not a case

of culpable homicide amounting to murder but a case covered by Section 304(1)/34 IPC. Accordingly, the learned trial Court held all the accused

persons guilty under Section 304(1)/34 IPC. The learned trial Court also came to the conclusion that the prosecution was able to prove the charge

under Section 447 IPC only against Hasmat Ali (appellant No. 1) and Sublus Ali but failed to prove the said charge against the other two accused

persons. Accordingly, all the accused persons were convicted under Section 304(1)/34 IPC, and the accused Nos. 1 and 2 under Section 447

IPC. As indicated above, for the offence under Section 304(1)/34 IPC, all the accused persons were sentenced to undergo rigorous imprisonment

for ten years and to pay fine of Rs. 1000/, in default, to undergo rigorous imprisonment for another three months. For the conviction under Section

447 IPC, the appellant No. 1 and Sublus Ali were sentenced to pay fine of Rs. 300/, in default, to undergo simple imprisonment for one month.

8. On a careful scrutiny of the evidence adduced, it is seen that there are four eye witnesses in this case, viz. PW2, 3, 5 and 6. To examine the

validity and correctness of the conviction of the appellants, it is considered necessary to examine the evidence of the said witnesses.

9. PW2 is Md. Asasullah. He stated that accused Hasmat Ali was his elder brother, Sablus his nephew whereas the other two accused persons

were his cousin brothers, being the sons of his uncle. According to him, the occurrence took place on 11042000 at 7.30 am. At that time, he was

ploughing the land of the informant as an adhiar. While he was ploughing, accused Hasmat and Sablus came near him and asked him to unyoke the

plough but be did not listen to them. Thereafter, the two of them went to the house of accused Karim. After sometime, all the four accused persons

came out from the house of Karim. Sablus was carrying an iron axle of a push cart. PW2 stated that at that time the son of the informant Giasuddin

was watching him ploughing from the road, which was about 8 ft. away. According to him, he had heard Karim telling Sablus as to whether he had

come to enjoy the possession of the land(sic). Immediately thereafter, he saw Sablus hitting Giasuddin on the head from behind with the iron axle,

following which Giasuddin fell on the ground. The accused persons fled from the scene thereafter. He stated that Sablus took away the axle along

with him. In his cross examination, he clearly stated that from a distance of 8 ft., he had seen Sablus assaulting Giasuddin. He, however, was

categorical in his deposition that though the other accused persons were near them, they did not do anything. But all the accused persons fled away

after Giasuddin had fallen down after being assaulted.

10. PW3 is Md. Mahammed Ali. He is from the same village as the accused. He also stated that the occurrence took place at 7.00 am on

11042000. At that time, he was grazing the cows. He saw Giasuddin witnessing the ploughing of their land by Asanullah, the PW2. He also stated

that accused Hasmat and Sablus came to the field to unyoke the plough. Having failed to do that, they entered into the house of Karim. According

to the PW3, Giasuddin was standing on the road looking towards the field where the P.W2 was ploughing. Then Sablus came out from Karim''s

house with an axle of a push cart in his hand and he was accompanied by the other accused persons. Immediately, Sablus hit Giasuddin on the

head with the axle from behind and Giasuddin fell down on the ground. Thereafter, the accused persons fled from the scene. Giasuddin had cried

out that Sablus had hit him whereafter he became speechless. PW3 found the back of Giasuddin''s head broken. He also stated that while fleeing,

Sablus had taken along the axle with him with which he had hit Giasuddin. He stated that the axle would be about 4 ft. long.

11. PW5 is Md. Aizuddin Ahmed. He identified all the accused persons as they were known to him. In fact, accused Hasmat was the husband of

his elder sister. He also said that the incident took place on 11042000 at 7.00 am. PW5 saw Hasmat and Sablus trying to unyoke the plough of

PW2, which led a commotion. Failing to unyoke the plough, the two of them went to the house of accused Karim which was nearby. After

sometime, the accused came out from the house of Karim and Sablus was seen carrying an iron axle. He saw accused Karim slapping Sablus and

heard him uttering a vulgar word and further saying that if he wanted to enjoy possession of the land, he should finish him off first. At that time,

PW5 asked Sablus as to why he was carrying the iron axle and told him to drop the same but Sablus responded by saying that he had brought it

since he required it. Immediately thereafter Sablus went towards Giasuddin and hit him on the head from behind with the iron axle following which

the victim fell down on his face. PW5 ran towards Giasuddin and tried to lift him. He found that the backside of the head of Giasuddin had broken

completely, causing a depression. The accused persons ran away after the incident. In his crossexamination, he stated that the axle would be 3/4 ft.

long and that Sablus had taken along the axle after committing the offence.

12. Md. Anchar Hussain is the PW6. He claimed to belong to the same family as the accused persons. According to him, the occurrence took

place in the month of April in the year 2000 and that the time was about 6.45 am. He was standing in front of his house when he saw Hasmat

having an altercation with Asanullah on the land of the informant. At that time, the son of the informant Giasuddin was standing on the road. Then

he saw Sablus carrying an iron rod in his hand which was about 4 ft. long. Sablus hit Giasuddin with the iron rod from behind. Giasuddin

immediately fell down on the ground and Sablus hurriedly went away taking the iron rod with him. He saw Giasuddin''s head broken and red with

blood. In his crossexamination, he reiterated that Sablus came stealthily and hit Giasuddin from behind. He was categorical in his deposition that

there was no one else with Sablus. In fact, he was quite emphatic in saying that he had not seen any other accused person with Sablus.

13. There is another witness, whose evidence can be said to be quite crucial. He is PW4 Md. Muzammil Haque. He is from the same village as the

accused persons. He also stated that the occurrence took place at about 7.00 am on 11042000. He stated that he had heard people shouting that

accused Sablus had beaten Giasuddin. He immediately ran to the place of occurrence where he found Giasuddin lying on the ground. When he

held him up, Giasuddin told him that Sublus had hit him. He found that the back portion of Giasuddin''s head had broken totally.

14. In the inquest report, the police stated that there was an injury measuring 21/2 inches on the left rear side of the head. No injury was seen on

the chest, back and thighs of the deceased. According to the inquest report, the deceased had died because of being hit on the head by a heavy

iron instrument.

15. The postmortem examination was carried out by Dr. Kali Charan Basumatary, who deposed as the PW9. According to him, there was one

lacerated wound of 8.5 cm x 0.8 cm size with 11 nos. of stitches on the left side of the parietal area and an abrasion of 1.3 cm x 0.3 cm in the

middle of the nose. PW9 stated that the cause of death was haemorrhage and shock resulting from the head injury. According to him, the injury

was antimortem in nature and caused by blunt force impact and homicidal in nature. He was quite empathic in saying that the injury over the head

was grievous and a fatal one. He also stated that the weapon used must have been a blunt weapon like iron rod, heavy wood or hard bamboo

lathi.

16. From a cumulative reading of the evidence of the witnesses as noticed above, three things become very clear. Firstly, accused Hasmat and

Sablus had entered into the field of the informant and engaged in altercation with Asanullah, the PW2. The second thing which comes out uniformly

through the testimony of the above noted witnesses is that the two of them thereafter went to the house of accused Karim. When the accused

persons came out of the said house, Karim was heard instigating Sablus, and thirdly, the accused Sablus, who was carrying an iron axle, came

from behind and hit Giasuddin on the head with it.

17. There is uniformity in the evidence in pointing out that there was one single blow by accused Sablus on the head of Giasuddin after which

Giasuddin fell down on the ground. The evidence of the said witnesses clearly say that the back side of Giasuddin"s head had totally broken. In

addition, PW4 has stated that he had heard people shouting that Sablus had hit Giasuddin and when he was lifting Giasuddin, he himself told him

that Sablus had hit him.

18. The medical evidence also supports the said evidence. PW9, the doctor, who had carried out the post mortem examination, was categorical in

his opinion that the death of Giasuddin had occurred because of the blow inflicted by the accused Sablus on the head with the iron axle. None of

the appellants were seen hitting or inflicting blows on the deceased. In fact, no overt act was attributed to the appellants. The evidence on record

clearly prove beyond all reasonable doubt that the death of Giasuddin was caused because of the single blow inflicted on his head by accused

Sablus with an iron bar. Therefore, there is no doubt that accused Sablus had committed the offence of culpable homicide not amounting to murder

and the learned Court below was justified in convicting him under Section 304(1) IPC.

19. Now coming to the question of complicity of the other accused persons i.e. the appellants in the commission of the aforesaid offence under

Section 304(1) of the Indian Penal Code by the accused Sablus with the aid of Section 34 thereof, it is seen from the evidence on record that there

is nothing to implicate two of the appellants i.e. Hasmat and Tazmul. Except the fact that all the four accused had come out of the house of Karim

together and also fled away together after Sablus had hit Giasuddin, there is no material to show that the above two accused had acted in

furtherance of common intention and that Sablus had executed what was decided previously by all of them. The above two instances, in my

opinion, are not sufficient to hold beyond all reasonable doubt that the two of them acted in tandem with accused Sablus in furtherance of common

intention in the commission of the offence under Section 304(1) IPC. On the other hand, the materials on record unmistakebly point to the

complicity of the other appellant accused, Karim in the offence committed by the accused Sublus under Section 304(1) of the Indian Penal Code.

In addition to the instances mentioned above, the evidence of the eye witnesses show that Karim had clearly instigated Sublus to give the fatal blow

to the deceased. The accused persons had a land dispute with the informant over the possession of his land. On the date and time of the

occurrence, PW2 was ploughing the land and the deceased was watching from the nearby road. After the accused Sablus and Hasmat failed to

stop the ploughing of the land by the PW2, they came to the house of accused Karim. When the accused persons came out of the said house, the

evidence of PW2 and PW5 clearly point out that accused Karim had instigated accused Sablus by telling him whether he had come to enjoy the

possession of the land(sic) and that if he wanted to enjoy possession of the land, he should finish Ã¯Â¿Â½himÃ¯Â¿Â½ off. Immediately thereafter Sablus

went and hit Giasuddin with the iron axle which he was carrying. Therefore, I am of the opinion that the prosecution had succeeded in proving the

complicity of the accused Karim in the commission of the offence under Section 304(1) IPC.

20. In so far the commission of the offence under Section 447 IPC is concerned, it is clearly evident from the evidence on record that accused

Hasmat and Sablus had entered into the land of the informant and tried to stop the ploughing of the land by the PW2 which led to a hue and cry. In

my considered opinion, the prosecution had succeeded in proving the charge under the aforesaid section against the above two accused persons.

21. Therefore, the conviction of the accused appellant, Md. Hasmat Ali under Section 447 IPC is upheld. Further, the conviction of the accused

appellant Md. Karim Ali under Section 304(1)/34 IPC is also affirmed. However, the conviction of the accused appellants Md. Hasmat Ali and

Md. Tazmul Ali under Section 304(1)/34 IPC is set aside and quashed.

22. Accused appellant Md. Karim Ali after his conviction under Section 304(1)/34 IPC by the learned trial Court, has been in custody for more

than five years. He was also in custody for about 3 months during the investigation of the case. After giving serious consideration to the question of

sentence, I am of the opinion that it would be in the interest of justice if the sentence of the accused appellant Md. Karim Ali for the offence under

Section 304(1)/34 IPC is reduced to the period already undergone by him.

23. In so far the sentence of the accused appellant Md. Hasmat Ali for the offence under Section 447 IPC is concerned, the fine imposed should

be realized, if not already realized.

24. In the result, the appeal is partly allowed to the extent indicated above.

25. Accordingly, the appellants are set at liberty and directed to be released forthwith, if not detained in any other case.

26. Registry to send down the LCR.

27. No cost.