

(1977) 06 GAU CK 0004

Gauhati High Court

Case No: None

Md. Giasuddin Ahmed

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: June 8, 1977**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 304
- Probation of Offenders Act, 1958 - Section 4, 6

Citation: (1977) CriLJ 1656**Hon'ble Judges:** N. Ibotombi Singh, J; Baharul Islam, J**Bench:** Division Bench

Judgement

Baharul Islam, J.

The appellant, Md Giasuddin Ahmed, has been convicted by the Sessions Judge, Gauhati, u/s 302 of the Penal Code and sentenced to rigorous imprisonment for life.

2. The facts material for the purpose of disposal of this appeal may be stated as follows :--

On 23-10-1972 at about 12 or 12.30 p. m. Osman Gani, deceased, a teacher of Lachima Sarkari Buniadi Bidyalay, was sitting in a conference with his colleagues, P. Ws. 2, 3 and 4, inside the school hall. Suddenly the appellant entered the room, with a dagger and stabbed him at his neck and ran away. Osman died on the spot 3/4 minutes after the assault. Hearing the outcry raised by the school children, people gathered there. The dead body was then brought outside the school and kept under a tree by the side of the P. W. D. road P. W. 9, Khaibor Ali, who is also a teacher of another school and who was at his residence at the time, was informed about the Incident by P. W. 8, Nazim Ali. P. W. 9 immediately came on a bicycle and saw the dead body of Osman Gani, who was his nephew. P. W. 9 went to the Doulasal Police Out Post and lodged a written report there. The report was sent to the Nalbari Police Station where a case was registered. The police investigated into the case and

in due course submitted a charge sheet against the appellant u/s 302 of the Penal Code. The committing Magistrate, after preliminary enquiry, committed the appellant to the Court of Session to stand his trial u/s 302 of the Penal Code.

3. The appellant pleaded not guilty to the charge. He pleaded alibi. His plea was that at the relevant time he was absent from home.

4. For the conviction of the appellant the prosecution relies on the evidence of P. W. 1, Dr. P. C Sarmah, who held the post mortem examination on the dead body of Osman Gani and the evidence of three eye witnesses, namely, P. Ws. 2, 3 and 4.

P. W. 1, Dr. Punna Chandra Sarma, who held the post mortem examination on the dead body found. "One punctured wound on the right side of the neck 4 inches in length which could be traced forward, downwards and medially towards the middle of the neck where another wound was found present. The instrument passed through the wound. The margins of the wound on the right side were inverted with that of the middle everted. The injury cut the vessels, trachea and the muscles and the trachea was cut completely." In cross-examination P. W. 1 has stated that the injury must have been inflicted from the back or right side of the deceased, In his opinion the injury was sufficient to cause instantaneous death.

P. W. 2, Satya Nath Medhi, at the relevant time, was the Headmaster of the Lachima Sarkari Buniadi Bidyalay, aforesaid. He deposes that at the time of occurrence. P. Ws. 3, 4 and he were sitting around a table at the end of the school hall and were discussing some school affairs, It was about 12-30 P. M. The students of the school were at study-Deceased Osman Gani was sitting in front of him across the table. P. W. 3 eat on his right, while Hormuz (P. W. 4) eat to his left. All of a sudden the appellant entered the room through the door and pierced Osman Gani on his neck with a knife and fled away from the spot, His evidence is corroborated by P. Ws. 3 and 4. Learned Counsel for the appellant submits that the evidence of P. Ws. 3 and 4 should not be accepted inasmuch as they are related to the deceased. True it is that P. Ws. 3 and 4 related to the deceased but they are natural witnesses. The facts and circumstances of the case show that they were present when the occurrence took place. Further their evidence has been corroborated by the evidence of P. W. 2, the Headmaster of the school, who belongs to a different community and is an absolutely independent witness. We do not have any reason to disbelieve P. W. 2 ; nor can we reject the evidence of P. Ws. 3 and 4 simply on the ground that they were related. Relationship is no ground to discredit a witness, if he is otherwise reliable. The evidence of p. Ws. 2, 3 and 4 clearly proves that it was the appellant who killed Osman, Gani, as alleged by the prosecution.

5. The next question is what offence has been committed by the appellant. The evidence of P. Ws. 2, 3 and 4 considered in the light of the sketch map (Ext. 5) and the medical evidence shows that the appellant entered the room through the door. Just in front of the door he found Osman Gani sitting on a chair. The right side of the

body of Osman Gani was most easily available to the appellant and he gave the stab on the right side of the body which was easily available to him. It appears from the evidence of P. W. 2 and the site of the injury that on entrance into the hall he found Osman Gani and gave the stab, which fell on the right side of the neck of Osman Gani. The neck is the vital part of the body and therefore when he stabbed causing a piercing injury the length of which was 4 inches, the appellant shall be presumed to know that the consequence of the stab might be death of the injured person. But other facts and circumstances of the case, namely, that he entered the room where the deceased was sitting along with other persons in the broad day time and that he gave the blow at the most easily available part of the body, do not necessarily show that his intention was to cause death of Osman but to injure him. In our opinion, therefore, the offence is one covered by Part II of Section 304 of the Penal Code and not by Section 302. We, therefore, set aside the conviction and sentence of the appellant u/s 302 of the Penal Code convict him u/s 304(II).

6. Mr. P. C. Kataki, learned Counsel appearing for the appellant prays that the appellant may be dealt with u/s 6 read with Section 4 of the Probation of Offenders Act, 1958. We do not feel inclined to deal with the appellant under the aforesaid Act in view of the daring character of the appellant. He entered the room with a dagger in hand and attacked Osman Gani, in broad day light In presence of so many people, We sentence him to undergo rigorous imprisonment for 6(six) years. The period of imprisonment already undergone by the appellant will do set off from this period of six years.

7. With the above modification in the conviction and sentence, the appeal is dismissed.

N. IBOTOMBI SINGH, J.

8. I agree.