(2016) 6 GauLJ 252 : (2016) 6 GauLR 158 : (2017) 2 GauLT 479

GAUHATI HIGH COURT

Case No: Criminal Appeal No. 52 of 2015

Champak Das	APPELLANT
Vs	
State of Assam	RESPONDENT

Date of Decision: Aug. 26, 2016

Acts Referred:

- Penal Code, 1860 (IPC) - Section 304

Citation: (2016) 6 GauLJ 252 : (2016) 6 GauLR 158 : (2017) 2 GauLT 479

Hon'ble Judges: Ajit Singh, CJ. and N. Chaudhury, J.

Bench: Division Bench

Advocate: Mr. Dhanesh Das, learned Additional Public Prosecutor, Assam, for the Respondent; Mr. M. Dutta, learned counsel, for the Respondent No. 2; Mr. Azad Ahmed, learned counsel, for the Appellant

Final Decision: Dismissed

Judgement

Ajit Singh, C.J. - Both these appeals are being decided by this common judgment and order, because they arise out of the same impugned judgment and were heard together.

2. In Crl. Appeal No.52/2015, appellant Champak Das has challenged his conviction under Section 304 Part I of the Indian Penal Code and sentence of 10 years rigorous imprisonment and fine of Rs. 10,000/- with default stipulation. In Crl. Appeal No.224/2015, complainant Samir Paul is aggrieved with the acquittal of Champak Das under Section 302 of the Indian Penal Code and is dissatisfied with his conviction under Section 304 Part I of the Indian Penal Code.

3. Facts in short are these. Champak Das is married to Susmita Das (PW-3). Both of them also have a son. Susmita Das along with her son was staying in her parental house. Samir Paul (PW-1) is her father and Kalitara was her mother. On 14.8.2011, around 8 PM, Champak Das went to the parental house of Susmita Das and requested his mother in law Kalitara to send Susmita Das along with him to his house. But, Kalitara insisted

Champak Das to permit Susmita Das to remain there for some more days. This discussion happened in the kitchen. Champak Das then asked Kalitara that he may be allowed to at least take his son along with him. But, to this also, she did not agree. This led to quarrel between them. And, in a fit and anger, Champak Das picked a dao from the kitchen and caused multiple injuries to Kalitara with it. Champak Das then tried to fled, but was caught by the public. Kalitara was carried to the hospital for treatment. There, the doctor declared her dead. The incident was witnessed by Susmita Das (PW-3), Sumita Paul (CW-1) and Khama Paul (CW-2).

4. At the time of incident, Samir Paul was in his shop. He was, therefore, informed telephonically about the incident by Susmita Das. On receiving the information, Samir Paul returned home. Thereafter, he made ejahar exhibit 1 at Police Station Langting.

5. Before Samir Paul made ejahar, the police had already received information that Champak Das had caused grievous injuries to Kalitara. Entry of this information was registered as G.D.No.428 dated 14.8.2013. On reaching the place of occurrence, Sub Inspector Narayan Saikia (PW-7) found that Champak Das was being beaten up by the public and on his intervention, Champak Das was sent to Police Station. Narayan Saikia also seized one dao. The seizure of dao is exhibit 2.

6. Dr. Mafiz Islam Asfar (PW-4) found multiple incised wounds on the body of Kalitara. He, in his post mortem examination report exhibit 4, opined that Kalitara died due to cut injuries on her head and neck.

7. The trial court relying upon the evidence brought on record by the prosecution as well as the evidence of Sumita Paul (CW-1) and Khama Paul (CW-2) convicted and sentenced Champak Das as aforesaid.

8. As mentioned above, Susmita Das is wife of Champak Das. And it is for Susmita Das, Champak Das had visited her parental house to bring her back to his house. Susmita Das was, therefore, naturally present at the place of occurrence. She has testified that incident took place in the kitchen of house, where Champak Das and Kalitara had quarreled over her stay. According to her evidence, she saw Champak Das causing injuries to Kalitara with a dao. In the cross examination, nothing has been suggested to discredit her evidence. The evidence of Susmita Das has also been substantially corroborated by Sumita Paul (CW-1) and Khama Paul (CW-2). Both these witnesses have testified in one voice that they saw Champak Das causing injuries to Kalitara with a dao. The evidence of these witnesses is fully corroborated by the post mortem examination report exhibit 4 which confirmed that Kalitara died due to multiple cut injuries on her body. We, therefore, find the evidence of Susmita Das (PW-3), Sumita Paul (CW-1) and Khama Paul (CW-2) reliable and trustworthy.

9. In view of the aforesaid ample evidence against Champak Das, his learned counsel has not assailed the prosecution story which is well founded and fully proved. We

accordingly confirm the finding of the trial court that Champak Das caused the death of Kalitara.

10. The learned counsel for Champak Das has however argued that even accepting the prosecution version in totality, the offence against Champak Das would be under Part II of Section 304 of the Indian Penal Code and not under Part I of Section 304 of the Indian Penal Code. Learned counsel for Samir Paul, on the other hand, has argued that having regard to the nature of injuries caused to Kalitara by Champak Das, the trial court committed an illegality in acquitting Champak Das of the charges under Section 302 of the Indian Penal Code. We find no merit in the submissions of both the respective counsel.

11. As seen above, Champak Das had visited the parental house of Susmita Das to bring her back to his house. But, Kalitara (his mother in law) did not agree. Champak Das then requested Kalitara to at least take his son along with him. Kalitara did not agree even to this request also. The adamant attitude of Kalitara led to frustration of Champak Das. In the result, quarrel ensued between them. At that time, both were in the kitchen. And without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, Champak Das picked the dao lying in the kitchen and caused injuries to Kalitara. Apparently, even according to the prosecution case, Champak Das did not visit the parental house of Susmita Das for committing any crime. He was also unarmed, when he visited her parental house. Both Champak Das and deceased Kalitara are victims of circumstances. The incident took place upon a sudden quarrel. But, having regard to the nature of injuries caused by Champak Das to Kalitara with a dao, it cannot be held that he had no intention of causing her death. In the fact situation of the case, the trial court has rightly convicted Champak Das under Section 304 Part I of Indian Penal Code instead of Section 302 of the Indian Penal Code.

12. The appeals are accordingly dismissed.