

Dasarat Teli Vs. the State of Assam

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Court : Guwahati

Decided On : May-23-2013

Judge : B.K. Sharma & L.S. Jamir

Appeal No. : Crl. Appeal (J) No. 79 of 2008

Appellant : Dasarat Teli

Respondent : The State of Assam

Judgement :

Judgment and Order, (Oral)

B.K. Sharma, J.

1. Heard Ms. B. Bhuyan, learned Amicus Curiae. Also heard Mr. D. Das, learned APP, Assam. We have also perused the entire materials on record. This jail appeal is directed against the judgment dated 11/04/2008 passed by the learned Additional Sessions Judge (FTC), Darrang, Mangaldoi in Sessions Case No. 47(DMFT) 2006. By the said judgment while convicting the accused appellant under Section 458/323/436/302 IPC, he has been sentenced to undergo RI for 2(two) years with fine of Rs. 3000/- and in default to undergo SI for 6 (six) months for the offence committed under Section 458 IPC. As regards his conviction under Section 323 IPC, the sentence is for SI for two months and for the conviction under Section 302 IPC, the sentence is RI for life with fine of Rs. 7,000/- and in default RI for further one year. For the offence under Section 436 IPC, the

sentence is RI for 5(five) years with fine of Rs. 5,000/- and in default to undergo RI for another one year. All the sentence are to run concurrently.

2. On the basis of the FIR dated 26/6/2003 lodged by the PW-1 i.e. son of the deceased, Mazbat Police Station case No. 62/03 was registered under Section 147/448/325/436/302/429 IPC. The allegation made in the FIR is that on 25.6.2003 at about 10.30 pm, some persons entered into the house of the informant with some sharp weapons. Out of them, 2 (two) persons entered into the room of the deceased by breaking open the door. The FIR further states that one had carried a dagger and other also carried another form of dagger (Khukri). Upon entering the room of the deceased, the person with the dagger inflicted injuries on him. When he raised hue and cry, the sister of the informant came out of her room but she was also beaten up by the culprits. They also set fire to the house, as a result of which the house got completely gutted. The belongings inside the house also got destroyed, value of which would be around one lakh. One calf and a goat also died in the fire. As per the FIR, the deceased was taken away and was killed by inflicting injuries. As per the FIR, earlier one Shri Manbodh Teli had come to their house and threatened to kill them. It was stated in the FIR that out of the persons entering the house, the accused appellant could be recognized by his mother and sister i.e. PW-3 and 4.

3. On the basis of the FIR, the Police also carried out investigation and submitted charge sheet against the accused appellant along with Manbodh Teli i.e. father of the appellant. Formal charge against both the accused persons was framed under Section 458/323/34; 302/34 and 436/34 IPC. Another substantive charge was also framed against both the accused persons under Section 323/302/436 IPC.

4. To prove the case, the prosecution examined 15 witnesses including 2 (two) Doctors and 1(one) Veterinary officer and also the I.O. The statement of the accused appellant was also taken under Section 313 Cr.P.C.

5. The learned trial court has passed the impugned judgment of conviction on the basis of the evidence adduced by the PW-3 and PW-4, who are the wife and daughter of the deceased. In the cross examination of PW-1 i.e. the first informant, it was suggested that the PW-4 i.e. his sister did not tell anyone implicating the

accused. The defence also tried to bring out that there was a prevailing land dispute between the parties.

6. PW-3 is the wife of the deceased who in her deposition stated that on the fateful night, the accused appellant had called her husband from outside. When the doors were not opened the accused appellant applied force. There after doors were opened by the PW-3 and immediately the accused assaulted her by a lathi. As per her evidence, the accused appellant set the house on fire and restrained her daughter i.e. PW-4 from going in any direction. The accused appellant also paid Rs. 1200/- on demand. Thereafter, the accused appellant inflicted injury on the deceased by a dagger. Thereafter, he took away her husband and he did not return in the night. His dead body was found next day morning at a place about 1(one) furlong away from their house. In her cross examination, it was put to her that she did not make any such statement during the investigation when her statement was recorded by the IO under Section 161 Cr.P.C.

7. PW-4 is the daughter of the deceased who also in her deposition stated about the happenings and also stated that the accused appellant had taken away her father and his dead body was recovered next day morning. Like that of the PW-3, in her cross examination it was suggested to her that she did not state the things stated in chief while making statement under Section 161 Cr.P.C.

8. Other witnesses are not eye witness and are not very material for a decision in the matter. However, PW-12 is the IO who in his statement, more particularly, in the cross examination referring to the testimony of PW-3 and PW-4 stated that during investigation the said two witnesses did not depose that they could recognized the accused appellant in the fateful night.

9. Ms. B. Bhuyan, learned Amicus Curiae has submitted that going by the aforesaid evidence it would be totally unsafe to hold that the accused appellant guilty of the charges referred to above. She submits that if the testimony of the PW-3 and PW-4 are tested in reference to their statements made during investigation under Section 161 Cr.P.C., the falsity of the testimony is writ large.

10. Countering the above argument, Mr. D. Das, learned APP, Assam has submitted that the evidence of the PW-3 is contrary to the materials available on record. In this connection, he has referred to the statements made by the PW -3 and PW-4 under Section 161 Cr.P.C. He submitted that contrary to the deposition made by the IO i.e. the PW-12, both the witnesses i.e. PW- 3 and 4, in fact, had implicated the accused appellant in their statement made under Section 161 Cr.P.C. He also submits that the plea of alibi as was raised by the accused appellant having found not proved, the trial Court was right in passing the impugned judgment of conviction, more particularly when the accused appellant was absconding from facing the trial.

11. As noted above, the whole basis of conviction of the accused appellant is the evidence adduced by the PW-3 and 4. It will be pertinent to mention here that the other accused i.e. the father of the present appellant has been acquitted by the impugned judgment as no evidence was found against him.

12. The learned trial Court while appreciating the evidence of PW- 12 took the same on its face value so as to hold that both the PW-3 and 4 in their statement given under Section 161 Cr.P.C. did not name the accused appellant. However, the fact of the matter is that the PW-4, in fact, in her statement made before the Police had named the accused appellant. During trial, the PW-3 was categorical that it was the accused appellant who had called her husband from outside and that she was hit by a lathi. In her statement she also stated that the accused appellant inflicted injury on the deceased by a dagger. However, if the said statement is taken into account in reference to her statement made under Section 161 Cr.P.C.. It is found that no such statement was made before the Police rather she had stated that although her daughter could recognize the accused appellant but she could not recognize him. In her statement made under Section 161 Cr.P.C. she described the persons as the culprits. She also stated that the faces of both the culprits were covered by black clothes. Per contra, the PW-4 in her statement under Section 161 Cr.P.C. stated that out of two persons, she could recognize the accused appellant. However, such statement will have to be considered in reference to the statement made by the PW-3 in which it was stated that the faces of both the persons were covered by black clothes and that she

could not recognize any one of them. It will have to be borne in mind that the PW-4 was only 13 years of age when her statement was recorded under Section 161 Cr.P.C.

13. The above evidence will have to be tested in the touch stone of the evidence of the DW-1. DW-1 in his statement stated that when fire broke out in the house of the deceased, he rushed to the spot. As per his testimony, the PW-3 had stated before him that some culprits had taken away her husband from the house. Significantly, she did not name the accused appellant. Another significant fact as disclosed by DW-1 is that the accused appellant was present at the place of occurrence and he along with them and others could extinguish the fire. Although, this evidence of DW-1 would nullify the plea of alibi as was raised by the accused appellant but the same will have to be considered appreciating the fact that as per his version, the accused appellant was present at the site and also extended help in extinguishing the fire.

14. Above being the position, it is to be considered as to whether only on the basis of the testimony of the PW-4 it will be safe to convict the accused. As discussed above, the question necessarily arises if a minor girl aged about 13 years (PW-4) could recognize the accused appellant then why the PW-3 her mother, could not recognize the accused appellant. As discussed above, the PW-3 also in her statement stated that faces of both the persons were covered by black clothes. Coupled with this, the PW-3 in her evidence during trial completely deviated from her stand during investigation that she could not recognize any one of the persons as their faces were covered by black clothes.

15. As has been held by the Apex Court in AIR 1997 SC 381 (Parwatabai Vs. Sonabai and others) where the story narrated by the witness in his evidence before the Court differs substantially from that set out in his statement before the police and there are large number of contradictions in his evidence not on mere matters of detail, but on vital points, it would not be safe to rely on his evidence and it may be excluded from consideration in determining the guilt of accused.

16. In (Suraj Mal Vs. The State (Delhi Administration)) reported in AIR 1979 SC 1408, the apex Court held that Where witnesses made to inconsistent statements

in their evidence either at one stage or at two stages, the testimony of such witnesses become unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses.

17. In (Alok Deb Roy and others Vs. State of Assam) reported in 2003 (3) GLJ 592, this court has observed thus:-

Evidence of defence witnesses to be treated at par with that of prosecution witnesses court should not proceed in premises that it is a tainted one Standard of proof prescribed for prosecution not applicable in assessing defence evidence If testimony of defence witness does not appear to fit in with facts and circumstances of case, the same has to be rejected.

18. The learned trial Court in its impugned judgment of conviction has proceeded in the premises that although from the testimony of PW-12 it is clearly revealed that none of the witnesses i.e. PW-3 and 4 had implicated the accused appellant in their statement made under Section 161 Cr.P.C. but the same cannot be the guiding factor towards acquitting the accused appellant in view of the clear testimony during trial. As has been held by the Apex Court in the above referred cases, if the story narrated by the witness in his evidence before the Court substantially differs from the statement made before the Police, it would be unsafe to rely upon such evidence. This being the position, we are of the considered opinion that the accused appellant is entitled to the benefit of doubt.

19. For all the above discussion, we set aside and quash the judgment dated 11.4.2008 passed by the learned Additional Sessions Judge, FTC, Darrang in Sessions Case No. 47(DMFT)2006. The accused appellant shall be set at liberty forthwith if not wanted in connection with any other case.

20. While appreciating the service rendered by Ms. B. Bhuyan, learned Amicus Curiae, it is hereby provided that she will be entitled to a hearing fee of Rs. 5000/- (Rupees five thousand) only to be borne by the Legal Services Authority. She will also be entitled to a copy of this judgment and order free of cost.

21. The Registry shall send the case records to the learned trial Court along with the copy of this judgment and order.

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