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Court : Guwahati

Decided On : Aug-08-2012

Judge : The Honourable Chief Justice Mr. a.K. Goel & B.D. Agrawal

Appeal No. : Crl. Appeal No.47 (J) of 2006

Appellant : Sunil Gore @ Sunil Gorh

Respondent : The State of Assam, Represented by the Additional Public Prosecutor

Judgement :

B.D. Agarwal, J.

1. The appellant herein, is none else but the husband of the deceased. The appellant stands convicted under Section 302 of the Indian Penal Code (in short, the IPC) for murder of his wife vide judgment dated 30.03.2006, passed by the learned Additional Sessions Judge (Adhoc), Lakhimpur, North Lakhimpur and he has been sentenced to undergo imprisonment for life and also to pay fine of Rs. 1,000/- with default stipulation for further RI for one year. Being aggrieved with the conviction and sentence the convict has preferred this appeal from jail.

2. Since the appellant was found unrepresented by any one, Smt Rita Boro Bora, learned counsel was appointed as Amicus Curiae. We have heard the arguments

of the learned Amicus Curiae as well as that of Sri D Das, learned Additional Public Prosecutor for the State of Assam. We have also gone through the impugned Judgment and the evidence proffered by the prosecution in the trial Court.

3. Though a plea of committing the offence under provocation was taken in the statement under Section 313 of the Code of Criminal Procedure, 1973 (in short, the Cr PC) as well as in the confessional statement, given before the Judicial Magistrate, no evidence in this regard was tendered in defence.

4. From the evidence on record, it appears that the alleged offence of murder of wife was committed by the appellant on 09.08.2004, at about 10:00 pm in his own house.

5. In order to bring home the aforesaid offence, the prosecution examined altogether 8 (eight) witnesses. PW-1 is none else but the mother of the accused; PW-2 is the Gaonburah (Village Headman); PWs-3 and 4 are independent witnesses from the locality; PW-5 is the Medical Officer, who had conducted the autopsy on the dead body; PW-6 is the Judicial Magistrate, who had recorded the confessional statement of the accused under Section 164 Cr PC and PW-7 is the younger brother of the accused.

6. PW-1 has deposed that her son was allowed to stay in their courtyard since he was suffering from mental illness. On the relevant night, the accused was at home with his wife. This witness has further deposed that she heard the outcry from the house of the accused and soon thereafter, the accused entered her house and also beat her. Thereafter, PW1 raised alarm whereupon witnesses from the neighbor hood came and overpowered the appellant and handed him over to the Police. Before that, PW-1 and other witnesses went inside the house of the accused and found his wife lying dead with homicidal wounds. In the cross-examination, this witness has reiterated that no quarrel had taken place in between the accused and his wife on the relevant night. The witness has further reiterated that before entering the house of the accused, she heard the accused shouting as-he had killed, he had killed.

7. PWs-2, 3 and 4 are witnesses from the neighbor hood. PW-2, who is the Gaonburah, has deposed that he reached the scene a little later and by that time the incident was already reported to the Dalhat Police Station and the accused was already overpowered and tied with a post. PW-2 has further deposed that he went inside the house along with the Police Officer and saw the dead body of the wife of the accused, which was smeared with blood. PW-2 is also a witness of the Inquest Report and seizure of dao. According to this witness, the dao was kept concealed beneath the bed. In the cross-examination, no suggestion was given to this witness that the offence was not committed by the appellant.

8. PW-3 has deposed that hearing the news that an incident had taken place in the house of the appellant he went to the place of occurrence. By that time, few people from the neighbor hood had already gathered. According to PW-3, they asked the accused to come out to which the accused did not respond. After sometime, the accused surrendered and he was taken into custody by the VDP persons. The next morning Police was informed and the dead body was taken out from the house. PW-3 has further deposed that on being led by the accused a dao was brought out from the house and the same was seized vide Ext-1. This witness was also present at the time of preparation of the inquest report by the Investigating Officer on the dead body. We do not find any suggestion to this witness that the offence was not committed by the accused.

9. PW-4 is a member of the VDP. He came to know from the brother of the accused (PW-7) that some commotion had taken place in the house of the accused. Accordingly, both of them went to the house of the accused/appellant and found that the accused was overpowered by the villagers. The next morning, Police came for investigation and seized the dao from inside the house.

10. The aforesaid testimony of the mother of the accused and independent witnesses from the locality regarding the complicity of the appellant is fortified by the confessional statement of the appellant himself before the Judicial Magistrate. The confessional statement has been proved as Ext-5 by the Judicial Magistrate (PW-6). When the said statement was put to the accused, while recording his statement under Section 313 Cr PC, the accused admitted that the statement was

given voluntarily. In the said statement, the accused admitted about assaulting his wife with a sharp weapon (dao), albeit with an alibi that he had assaulted his wife since he was being scolded by her for not going to work.

11. The Evidence Act does not define confession. Sections 24, 25 and 26 of the Evidence Act, 1872 have laid down the circumstances which make confessional statement of accused persons inadmissible in evidence. Under Section 24 if a confession is made by an accused on inducement, threat or promise is irrelevant in a criminal proceeding.

12. Section 25 prohibits use of any such confessional statement made before a police officer and Section 26 empowers the court to act upon a confessional statement made by an accused, whilst in the custody of a police officer, provided the same is made in immediate presence of a Magistrate. Section 164 of the Cr PC. has laid down the guidelines for recording of confessional statement of accused persons and also statements of witnesses.

13. As noted earlier the Evidence Act neither defines judicial confession nor extra judicial confession. With regard to the evidentiary value of the judicial confessions, the Honble Supreme Court has held in a catena of judgments that the conviction can be recorded on the sole basis of judicial or extrajudicial confessions. Without multiplying authorities on this point, we would just refer to the judgment of the Honble Apex Court, rendered in the State of Maharashtra-vs- Raja Ram; reported in (2003) 8 SCC 180. In this case their Lordships while examining the evidentiary value of an extrajudicial confession, held that if such confession is found to be voluntary and true and made in a fit state of mind the same can be relied upon by the court. Their Lordships further observed that it is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence.

14. Dealing with the evidentiary value of confessional statements, both judicial and extra- judicial, and referring to the case of R.-vs-Warickshall, reported in 168 ER 234, their Lordships summarized the legal strength of a confessional statement in the following words:-

A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt. It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law.

15. The legal principle regarding evidentiary value of confessional statement taken in the case of Raja Ram (supra) has been followed in the case of Alope Nath Dutta-vs- State of West Bengal; reported in (2007) 12 SCC 230 and also in the case of Bishnu Prasad Sinha Vs-State of Assam; reported in 2008 (2) GLT (SC) 1. The probative value of un-retracted confessional statement has been enunciated by the Apex Court in the case of Bishnu Prasad Sinha (supra) in this way:

31. A confessional statement, as is well known, is admissible in evidence. It is relevant fact. The court may rely thereupon if it is voluntarily given. It may also form the basis of the conviction, wherefor the court may only have to satisfy itself in regard to voluntariness and truthfulness thereof and in given cases, some corroboration thereof. A confession which is not retracted even at a later stage of the trial and even accepted by the accused in his examination under Section 313 of the Code, in our considered opinion, can be fully relied upon.

16. Needless to say that an extra judicial confession can be made before any person and not necessarily before persons in authority nor is there any requirement of law that extra judicial confession must be taken down in writing. On the other hand, judicial confessions have the sanction of law inasmuch as Section 164 Cr PC. prescribes the methodology for recording confessions. The Gauhati High Court has also framed rules with regard to recording of confessional statements, laying down pre-conditions for recording confessional statements with a view to find out whether the accused volunteers to give indictable statement on his/her own volition and that such statement contains a full and true account of the incident. The statutory guidelines for recording confessional statements provided under Section 164 Cr PC. and the statutory form prescribed by the High Court are nothing but salutary safeguard to ensure that the confession is made voluntarily by

the accused after being apprised of the implications of making such confession. In this way, confessions made before judicial Magistrates carry more weight and stand on higher footing than extra judicial confessions.

17. Hence, we find no difficulty to hold that there is no legal impediment to record conviction on the sole basis of confessional statement, provided the same is found to have been made voluntarily, without any inducement, threat or promise or is otherwise not hit by Sections of 25 and 26 of the Evidence Act.

18. Now, the pertinent issue in this case is as to whether the offence committed by the appellant would amount to murder or culpable homicidal not amounting to murder. The offence of culpable homicide has been defined in Section 299, whereas the offence of murder has been defined U/S 300 of the Indian Penal Code. The former one is the genus and the latter one is the specie of the generic offence. The basic difference in between these two offences lies in the gravity with which the offence has been perpetrated. To bring the offence within the mischief of murder, the prosecution has to establish any one of the four ingredients incorporated in Section 300. In other words, the prosecution has to establish that the culpable homicide was committed with definite intention or that the offender had requisite knowledge that the wound he was inflicting, would be sufficient to cause death of the person or atleast it would be eminently dangerous to the life. However, this will not be the end of the prosecutions responsibility. Even after the proof of any one of the above ingredients of law, the prosecution also has to rule out the possibility of attracting any one of the five statutory Exceptions incorporated in Section 300. If any one of the five Exceptions is proved, the gravity of the offence can still be reduced to only homicidal death.

19. The distinction between culpable homicide and murder has been lucidly illustrated by the Honble Gauhati High Court in the case of Ripunjay Borgohain Vs- State of Assam; reported in 1998(4) GLT 502. The relevant observations of the Honble High Court can be fruitfully extracted below:-

Culpable homicide and murder both involve causing of death of human being by another human being. Culpable homicide is genus whereas murder is specie. All murder is culpable homicide but not vice-versa. Presence of special mens-rea is

the distinguishing mark. It consists of four intellectual dispositions mentioned in Section 300 of the I.P.C.(subject to the exceptions indicated). Punishment is to be inflicted proportionate to the gravity of the generic offence. Murder is the first degree of culpable homicide cited in Section 300. The second degree of culpable homicide is punishable under the first part of Section 304. The third degree of culpable homicide, in the reduced form, is punishable under the second part of Section 304.

20. In the case before us, Exceptions 1 and 4 are applicable and, as such, the relevant portions of the said Exceptions are extracted below-

Exception 1. When culpable homicide is not murder. Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

Exception 4. Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

21. It is true that the deceased was done to death by inflicting a cut injury on the neck and as per the Medical Officer, who had conducted necropsy on the dead body, the cut wound was so deep that even the cervical spine was found fractured. At the same time, the assault was not repeated. In his statement under Section 313 Cr PC, the accused has stated that he had assaulted his wife in anger and he never thought that his wife would die.

22. The above apart, while giving the confessional statement before the Judicial Magistrate, the accused had also pleaded that the offence was committed under provocation and the said plea can be ascertained from the following statement:

My wife had physical relation with my father and I came to know about this since two months ago. I had seen my father co-habiting with my wife many times. My wife used to go and sleep with my father after I fell asleep. My wife had sexual

relationship with other people of the village also. She was a woman of loose character and the villagers knew it. I have two sons. I still think that my wife is alive. I have just to say this.

23. Though no direct or indirect evidence is available on record to suggest that the deceased was involved in extra marital relation the statement of the accused given before the Judicial Magistrate under Section 164 Cr PC, disclosing the extra-marital relationship by his wife cannot be totally overlooked. It may also be mentioned here that the offence of murder has not been proved by the prosecution with direct evidence. The settled legal principle is that if an offence is sought to be proved by way of circumstantial evidence it is desirable that the prosecution should also bring on record some evidence of motive, although it is not sine qua non. In the case at hand, the accused has rather brought on record the reason for killing his own near and dear wife. In our opinion, the alibi taken by the accused in his confessional statement brings the case within the parameters of Explanation 1 to Section 300 IPC.

24. The above apart, the mother of the accused has also admitted in the cross-examination that the accused was not completely healthy and he was suffering from mental illness. Similarly, this piece of evidence has to be read conjointly with another statement made by the accused before the Judicial Magistrate (CS) wherein the accused had also taken a plea that on the relevant night his wife had scolded him for not doing any work and because of this nagging he had become angry. Since the accused was suffering from mental disease, it can be believed that the accused was irregular in attending his daily work to earn livelihood and as such, the deceased must have scolded the accused and that was one of the causes to assault the deceased giving a Dao blow in the heat of passion and without any premeditation. It may also be mentioned herein that the accused did not take any undue advantage of the situation, inasmuch, as only one Dao blow was inflicted, without realizing its consequence. In this way, Explanation 4 to Section 300 IPC is also attracted.

25. For the aforesaid reasons, we hereby convert the conviction from Section 302 to Section 304 Part-I IPC. In view of the modification of the conviction, the

sentence is also reduced to 8 (eight) years RI, maintaining the amount of fine and the default sentence.

26. We appreciate the services rendered by Smt R Boro Bora, as Amicus Curiae. Hence, it is ordered that the learned Amicus Curiae shall be entitled to one days hearing fees from the Legal Aid Services Authority.

27. In view of the provisions prescribed by Section 357-A Cr PC, the victim or his/her dependants are entitled to get compensation for rehabilitation in appropriate cases. In view of the law laid down in the case of Jalilur Rahman vs- State of Assam, reported in 2012(1) GLT 238, regarding granting of compensation to the victim, as provided in Section 357-A Cr PC., we make the following directions:

(i) As an interim measure, an amount of Rs.50,000/- shall be deposited by the State Government with the District Legal Services Authority of Dibrugarh 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 dependant(s), who suffered loss and injury as a result of death of the deceased and if such dependent(s) or legal representative(s) need any rehabilitation.

(ii) Upon such enquiry, if it is found that the dependent(s), if any, need rehabilitation, then the District Legal Services Authority shall initially release the said interim amount and thereafter direct payment of adequate compensation, as may be prescribed by the scheme to be prepared by the State Government. It is made clear that if the District Legal Services Authority, after due enquiry, arrive at the findings that there is no dependent(s) or that the dependent(s) of the deceased/victim does not require 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.

28. The Registry is directed to return the LCRs to the trial court, which shall issue modified custody warrant in view of the alteration in the conviction and sentence.