

Moriomun Nessa and Others Vs. State of Assam

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Court : Guwahati

Decided On : Feb-05-2014

Judge : K. Sreedhar Rao & M.R. Pathak

Appeal No. : Criminal Appeal No. 140 of 2010, 195 of 2010 & 159 of 2011

Appellant : Moriomun Nessa and Others

Respondent : State of Assam

Judgement :

Sreedhar Rao, J.

1. The material-facts of the prosecution case disclose that one Jalal Uddin alias Abdul Baki is deceased. Accused 1 is his wife, and accused 2 and 3 are his sons-in-law.

2. PW-2 - Abdul Bari - is brother of the deceased, and complainant. On the morning of 18.6.2006 he found his brothers dead body in the house. The FIR has been lodged on 21.6.2006 at around 8:30 PM. In the FIR, it is stated that his brother was found dead in the house and on a secret inquiry he came to know that his brother was said to have been killed by accused 1 and 2.

3. In course of the investigation it is revealed that the accused 3 had also participated in the commission of the murder. The deceased was killed by strangulation with a muffler. The death is said to be homicidal as per the post-

mortem report. The investigation further discloses that investigating officer in course of the investigation finds that the accused 1, 2 and 3 had caused the murder. All the accused were charged with for committing offences under section 302, read with section 34 of the IPC.

4. In the evidence before trial court PW-2 has stated that at the time of the incident two minor daughters of the deceased who were examined as CW-1 and CW-2 were also present in the house and were witness to the incident and that he was told by them that the accused persons had caused the death.

5. Public Prosecutor, on the basis of the evidence of PW-2 had made an application under section 311 of the Cr PC in the trial court to summon the said two daughters of the deceased and they were accordingly examined as CW-1 and CW-2. In their evidence they say that they have witnessed the incident, but did not dare to tell the fact to PW-2 and others, as they were threatened by their mother that if they did so they would also be killed. They further say that when their mother was arrested and sent to jail, they got emboldened and later informed the participation of accused 2 and 3 in the murder of their father. The trial court chiefly on the basis of the evidence of CW-1 and CW-2 coupled with that of PW-1 and PW-2 has convicted all the accused for the offences they are charged with. Therefore, the convicted accused persons have filed these appeals separately.

6. The counsel for the accused 3(the appellant in criminal appeal 195/2010) submits that there is no mention in the FIR the name of the appellant as a suspect. The version of CW-1 and CW-2 that they could not inform the incident until their mother went to jail is an incredible version. Mother came to be arrested on the following day. If it is so, police should have come to know about it and should have recorded statement of CW-1 and CW-2 under section 161(3) of the Cr PC, or at least under section 164(5) of the Cr PC: but statement has not been recorded either; it is almost one year after the incident for the first time CW-1 and CW-2 depose before court that they were witness to the incident and that they could not reveal the fact to anybody as they were threatened by their mother that if they did so they would also be killed. Non-examination of CW-1 and CW-2 at the earliest point of time by investigating officer creates serious suspicions about their

veracity. Therefore the order of conviction is to be set aside.

7. The counsel appearing for the accused 1(the appellant in criminal appeal 140/2010) and the accused 2(the appellant in criminal appeal 159/2011) submits that the order of conviction is based upon incredible and discrepant evidence and therefore the same is to be set aside.

8. Learned public prosecutor submits that CW-1 and CW-2 have stated that out of fear they could not tell the fact to anybody until their mother was sent to jail and they could reveal it after five days. Non-recording of statement of CW-1 and CW-2 is a lapse on the part of investigating officer and that need not be a ground to disbelieve their veracity and therefore the order of conviction is sound and proper.

9. On a stern scrutiny of the facts and the evidence it is to be seen that on 18.6.2006 the dead body was found and was later subjected to post-mortem. Which means that police arrived at the spot and took steps required for investigation. However, statement of PW-2 was not recorded immediately; it was recorded after three days and the same was later registered as FIR. The contents of the FIR only mention the accused 1 and 2 as suspects and not the accused 3 as such.

The evidence of CW-1 and CW-2 becomes doubtful to be believed because they say that after their mother was sent to jail they became bold and later informed the fact to the relatives. If it is so, there may be a good reason for the investigating officer for not recording statement of CW-1 and CW-2 on the day the FIR was lodged; but at least after the revelation he should have recorded their statement and cited them as witness. The further- statement of PW-2 was also not recorded to corroborate that CW-1 and CW-2 revealed him the fact after the accused 1, the mother, was sent to jail. CW-1 and CW-2 have been examined before court almost after one year for the first time they depose before court without being cited as witness in the charge-sheet. In the context of discrepancies the evidence of CW-1 and CW-2 becomes doubtful to be believed. The possibility of they being tutored cannot be brushed aside. It is to be seen that immediately after the dead body was found, police took up investigation. That PW-2 did not mention in the FIR the names of the accused 3. The FIR was registered after an inordinate delay three

days.

10. In view of the above discrepancies the order of conviction is bad in law. Accordingly the appeals are allowed. Appellants/ accused are acquitted, of whom appellant/accused in criminal appeal 140/2010 - Moriomun Nessa - be released forthwith if not wanted in any other case. Communicate the order to the trial court and jail authorities.

11. Ms B Sarma, present in Court, was appointed as amicus curiae in place of Sri B Chakraborty, the amicus curiae, who was stated to have been appointed as judicial officer. The fee of amicus curiae who assisted the Court in the matter, is fixed at rupees seven thousand, to be paid to her by the State.

SUPERINTENDENT (ACCOUNTS)

Enclosed please find herewith the tour programme of Honble Justice K Sreedhar Rao at Kohima in connection with holding of circuit courts there, according to which TA/DA may be reimbursed to His Lordship, at the earliest.

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