

Naga Kachari Vs. the State

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Court : Guwahati

Decided On : Jul-18-1956

Judge : Sarjoo Prosad, C.J. and Deka, J.

Appellant : Naga Kachari

Respondent : The State

Prior history : Deka, J. 1. This appeal is on behalf of Naga Kachari who was convicted by the learned Additional Sessions Judge, Lower Assam Districts under Section 302, Penal Code and sentenced to imprisonment for life. The learned Additional Sessions Judge accepted the majority verdict of the jury, the verdict being divided as seven to two. 2. The case for the prosecution was that at about sun-set on 7-9-1952 Aghona Kachari who is at places described as Aghona Master (a teacher went out to a place within h

Judgement :

Deka, J.

1. This appeal is on behalf of Naga Kachari who was convicted by the learned Additional Sessions Judge, Lower Assam Districts under Section 302, Penal Code and sentenced to imprisonment for life. The learned Additional Sessions Judge accepted the majority verdict of the jury, the verdict being divided as seven to two.

2. The case for the prosecution was that at about sun-set on 7-9-1952 Aghona Kachari who is at places described as Aghona Master (a teacher went out to a place within his compound to attend to the call of nature with a ghoti (water pot) in his hand. At that time three persons were seated in the courtyard of Aghona they being his mother Maghi Kacharini, his wife Mt. pomila Kacharini and a neighbour Gela Kachari. They soon heard a cry coming from the direction to which Aghona proceeded a few minutes ago - that he was being killed by Naga the accused.

The three persons at once ran to the place from where the cry came and found Aghona lying on the ground with a spear injury on his chest. The spear was also lying there being extracted either by Aghona himself, or with the help of some of the prosecution witnesses, the story being slightly discrepant on this point. The witnesses on arrival at the spot could see Naga Kachari running away towards his house with his three other brothers. It appears from the sketch map proved in this case that the accused lived within about eighty yards of the place of occurrence.

Soon after, several persons of the locality assembled at the place of occurrence on being called by Maghi Kacharini the mother of the deceased. They deputed P. W. 7 Nakul Kachari to lodge information with the police at the Lahorighat Police Station and he was accompanied by Gela Kachari (P. W. 1), Jogen Deka (P. W. 4) and a few others. The first information report was lodged at about 10 P.M. to the effect that on that very evening Aghona Kachari was speared to death by Naga Kachari and that he was instigated by his three other brothers who were seen departing along with the accused from the place of occurrence.

The dead body of Naga Kachari was Bent to Nowgong Civil Hospital for post mortem examination which was held on the 9th September and an injury was found on the chest of the deceased which had pierced the pleura and inner aspect of the left upper lobe of the lung and right auricle of the heart. Medical evidence supports the prosecution story that the death was instantaneous and it was caused by the injury on the chest which might have been caused by a spear. The injury was oval 2 1/4' x 1' on the upper part of the chest.

The Police after completing the investigation sent up accused Naga Kachari alone for trial and he being duly committed was tried of the offence under Section 302,

Penal Code of which he was found guilty.

3. We have heard the learned Advocate appearing for the appellant at some length and have perused the charge to the jury. We do not find any material misdirection or non-direction in the charge which might be said to have prejudiced the accused in his defence. The charge was more in favour of the accused than to his prejudice,

The learned Advocate tried hard to convince us that the learned Judge had not duly placed the evidence of the investigating officer which would support the appellant's contention that Gela Kacharl (P. W. 1) was not present at Aghona's courtyard at the time of the occurrence. The statement as recorded by the learned Additional Sessions Judge might on the face of it support the contention to some extent. But on a reference to the Police Diary we find that the statement as made by the investigating officer Mohidhar Bora (P. W. 8) is not really based on the statement he has recorded.

As a matter of fact the Police officer had not re -corded the statement of Gela Kachari separately except that he noted that he supported the statement made by Nakul Kachari as recorded on the day the first information was lodged. Similar mistakes have cropped up with regard to certain statements alleged to be made by (P. W. 2) Maghi Kacharini.

It is undoubtedly regrettable that sufficient care and caution were not taken by the Court at the time this evidence was recorded. The section itself lays down under what circumstances a part of the statement recorded under Section 162, Criminal P.C. may form a part of the evidence and for what purpose it can be used.

In this case it appears that the attention of the learned Additional Sessions Judge was not drawn to the extracts contained in the police diary and that the attention of the Police officer also does not seem to be drawn at the time, to the statements as recorded by him. The main intention of the section is to bring out the contradiction in the statements made by the witnesses themselves before the Court and before the investigating officer. What the Police officer's impression is about the statements, is not really evidence, nor can it go to the record as such; only the

statements of the witnesses recorded by him under Section 162, Criminal P.C. may be let in under the circumstances as described in that section.

In this case, for instance, the investigating officer (P. W. 8) has deposed: 'she (Maghi) stated to me that she and the other female members saw people running away and saw the back side.' On a reference to the Police Diary it is to be found that what the witness Maghi stated before the police was that she saw that the accused Naga-Pado, Bolo, Fulon running away towards their home.... Only the backsides were seen.' Therefore, the statement of the witness does not support the statement made by the investigating Police officer whose statement was rather inaccurate and prejudicial to the prosecution,

About Gela Kachari also the same thing may be said because no question was put to Gela Kachari or other witnesses as to his presence at the time of the occurrence in the courtyard of the deceased. The statement of the Police officer therefore is not quite in keeping with what is in the Police Diary and the learned Judge should have been better advised to look into the statement as recorded by the Police Officer before allowing the witness to speak on the point.

The Police officer should be allowed to make a statement only after referring to the statement recorded by him and not otherwise, because the memory may very often play false. We have had to refer to the Police Diary because of the illegal manner in which this evidence was recorded by the Court. We only desire that in these proceedings the Court should strictly comply with the provisions of law in recording the evidence. The point as raised, therefore has no substance.

4. The learned Advocate for the appellant drew our attention to certain small discrepancies in the matter of evidence.. The evidence as placed before the jury by the learned Additional Sessions Judge was fair. The main question was whether there was sufficient evidence about the identification of Naga Kachari at the time of occurrence. That Maghi and Pomila went to the place of occurrence is not denied nor seriously challenged.

Assuming no third party was there and if the evidence of these two witnesses is believed as to the recognition of the accused at the time of the occurrence, the jury

were quite competent to find the accused guilty. P. W. 4 a close neighbour and an independent witness gives sufficient evidence in support of the prosecution as to the hour of the occurrence and to the identity of the accused as reported by Maghi. We, therefore, do not think that there is any prejudice to the accused caused by any serious omission in the charge.

5. In our opinion, there is no material misdirection which might have vitiated the charge, and the evidence on the face of it appears to be adequate for the purpose of the conviction of the accused. We, therefore, dismiss the appeal.

Sarjoo Prosad, C.J.

6. I agree.

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