

Narinder Kr. Singh Vs. State of Assam

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Court : Guwahati

Decided On : Jul-30-2008

Judge : Aftab H. Saikia and Hrishikesh Roy, JJ.

Appellant : Narinder Kr. Singh

Respondent : State of Assam

Prior history : Aftab H. Saikia, J. 1. Heard Mr. J. Singh, learned senior counsel assisted by Mr. J.M. Paul and Ms. M. Baruah, learned Counsel appearing for the appellant as well as Mr. K.C. Mahanta, learned Public Prosecutor, Assam. 2. The legality and correctness of the conviction of the appellant under Section 302 of the IPC and his sentence to undergo rigorous imprisonment for life, imposed by the learned Sessions Judge, Bongaigaon by his judgment and order dated 19.5.2003 passed in Sessions Case No. 34(B

Judgement :

Aftab H. Saikia, J.

1. Heard Mr. J. Singh, learned senior counsel assisted by Mr. J.M. Paul and Ms. M. Baruah, learned Counsel appearing for the appellant as well as Mr. K.C. Mahanta, learned Public Prosecutor, Assam.

2. The legality and correctness of the conviction of the appellant under Section 302 of the IPC and his sentence to undergo rigorous imprisonment for life,

imposed by the learned Sessions Judge, Bongaigaon by his judgment and order dated 19.5.2003 passed in Sessions Case No. 34(B)/96 have been assailed in this criminal appeal.

3. The appellant was charged under Section 302 of the IPC for causing death to R.N. Misra (hereinafter referred to as 'the deceased'), the Assistant Commandant, A/53, CRPF, Amguri Camp by firing him with his service rifle on 4.3.1995 at about 5 P.M.

4. The first information report was lodged alleging the above incident by PW 5 Sri Ranabir Singh, the Commandant of 53 Battalion of CRPF with the officer-in-charge, Bijni Police Station in the District of Bongaigaon on the date of occurrence itself i.e. on 4.3.1995.

5. The trial court having carefully considered the testimony of as many as 10 prosecution witnesses, including two doctors namely, PW 6 Dr. Mukul Chandra Barman, who conducted the autopsy on the person of the deceased, PW 7 Dr. Prasanna Kr. Das who examined the injury so inflicted on PW 1 Sri K.K. Padmanav and PW 10, the Investigating Officer as well as two defence witnesses so examined on behalf of the defence and also upon hearing the learned Counsels for the parties, came to the conclusion that the appellant was found to be guilty for committing murder of the deceased and accordingly convicted and sentenced the appellant as already indicated above.

6. Challenging the conviction and the sentence of the appellant, Mr. Singh, learned senior counsel assisted by Mr. Paul has strenuously argued that on the face of the material evidence itself, it is not a case under Section 502 of the IPC and at best it may be a case under Section 304 Part-II of the IPC and inasmuch as the death of the deceased happened in a spur of the moment, out of sudden and grave provocation meted out to the appellant by the deceased. The appellant was deeply touched and agitated by the warning letter dated 4.3.1995 issued by the deceased who initially asked the appellant verbally to cut his hair and beard and also remove his turban as he was not a Sikh but a Hindu. It is contended that the initial verbal warning was later on translated into the warning letter by the deceased issuing on the very date of the incident. Then after the warning letter, the appellant was

forced to get his hair and beard cut by the barber attached to the CRPF camp.

7. In support of his submissions the learned Counsel for the appellant has basically relied on the evidence of PW 1, Sri K.K. Padmanav, the eye-witness, DW 1 the appellant himself and DW 2 Sri N. Ranbir Singh, Assistant Commandant who was examined as a witness on behalf of Commandant of 53 Battalion, CRPF as well as the statement of the appellant recorded under Section 313 of the Cr PC. A careful scrutiny of deposition of all those above mentioned witnesses including the statement of the appellant under Section 313 Cr PC would abundantly make it clear that the unfortunate incident of killing of the deceased happened due to the provocative behaviour, language and conduct hurled at the appellant by the deceased.

8. On the other hand, Mr. K.C. Mahanta, learned Public Prosecutor has contended that since the appellant himself in his examination under Section 313 of the Cr PC emphatically and strenuously admitted that he killed the deceased with the SLR in his hand by firing 7 bullets, the learned Sessions Judge was justified and correct to convict and sentence the appellant as already mentioned above and according to him there is no illegality or legal infirmity in passing the impugned conviction and sentence so imposed upon the appellant.

9. We have given our thoughtful consideration to the arguments so advanced by the learned Counsel representing the parties. We have also meticulously scanned the testimony of all the prosecution witnesses, including the PW 1, PW 3 and PW 4 who were examined as eye-witness to the incident including the defence witness, DW 1 and DW 2. We have also gone through the medical evidence so adduced by the Doctor, PW 6 as well as the statement made by the appellant in his examination under Section 313 of the Cr PC.

10. It appears from the examination of the appellant under Section 313 of the Cr PC against the question No. 4, i.e.

It has been alleged in the evidence that around 5 p.m. on 4.3.95 while Rabindra Nath Misra, the Assistant Commandant was of CRPF was working at the CRPF office you stood at the doorway of it and all of a sudden fired 7 rounds

continuously at him from the SLR in your hand; and he died on the spot as a result of it. Constable K.K. Padmanavaiya sustained injury in his left hand as he was there nearby. Do you have something to say in this regard?' The appellant answered as follows:

Yes Sir, I killed Rabindra Nath Misra Sahib with the SLR in my hand. I might have fired seven bullets. I did not see bullets hitting Padmanavan, I fired at Misra Shib only.

Against the question No. 10, 'Do you have something else to say?' the appellant answered as follows:

I am a Sikh by religion. And when I joined my service in that status, I took my oath as per Sikh religion. In my photograph attached to the I.D. Card I had beard and was wearing a headgear. I was posted as the bodyguard of R.N. Misra at Amguri Camp. On 1.3.95 Misra Sahib asked me to take rest as I had returned after collecting salary at Bongaigaon. I went to take bath in a nullah nearby. K.B. Bani asked me to return early as Misra Sahib had summoned me. I went to the office along with Havildar Bani. Then Misra said to me, 'What are you In reply to this I said to him, 'I am a Sikh'. He told me that I was not a Sikh, but a 'Janowar' (animal). The very day he removed me from my duty as his bodyguard and detained as the quarter guard. In the morning the following day he scolded me as the 'Janowar' (animal) and instructed me to cut my hair and beard. I told about this to my other colleagues. They advised me to submit a representation to the commandant. On 4.3.95 I submitted an application to the commandant through Misra Sahib. But he did not send my application to the commandant. Thereafter Misra served me with a warning letter. Reading : 'You will be imposed hearsay penalty if you do not cut your hair and beard.' Then following Misra's order, Bani Sahib took me to the field and had my hair and beard cut by calling in a barber by name Thakur. Then I wept. Then I took a bath in the river. My colleagues then started to make fun of me when they saw me. I felt awkward when I look in the mirror. Later on, around 5 p.m., Mr. Bani told me that Misra Sahib had examined me. At that moment I was proceeding for my duty, armed with a rifle, Mr. Bani asked to put on a cap. I told him that in my religion there is no practice of wearing

a cap and that I was not going to put on one. Mr. Bani produced me before Misra Sahib. As I did not have either a cap or a headgear I could not give salute to him; rather I took a 'Sabdan' position. At the sight of me Misra Sahib started giggling and striking his hands against the table said to me, 'You were an animal, I have made you a human being.' You should be happy over it. He said to Bani, 'offer a party to all with sweetmeat and wine' he further added that afterwards, he would turn other people too to human beings in the same manner. It wounded my feelings and having I lost my judgment, fired at Misra with the SLR with me and then surrendered along with the rifle.

11. Having gone through the above statement of the appellant, there is no doubt that the appellant admitted his guilt in killing the deceased.

12. Nevertheless, from close perusal of the entire evidence of the witnesses so examined by the prosecution, it appears that the entire incident occurred due to the warning accompanied by the letter given by the deceased to the appellant, who was a Sikh by belief and was keeping hair and beard and wore a turban as per Sikh religious tradition and the forceful cutting of the hair and beard of the appellant had caused him great humiliation. Even thereafter the deceased taunted the appellant by filthy language in front of his colleagues, after cutting of this hair and beard and removal of the turban. It appears from the record that after cutting of the hair and beard, the deceased passed remarks saying that 'you were an animal. I have made you a human being' and the deceased also remarked to the appellant that he would offer a party to all with sweets, meat and wine. The said humiliation meted out to the appellant had happened just before the incident.

13. Having considered the entire circumstances, as recorded above, we are of the firm view that the appellant acted on a spur of moment out of the grave and sudden provocation caused by the deceased as the religious sentiment of the appellant, as it appears, was strongly hurt.

14. In the backdrop of the above facts, situation and keeping in view the mitigating circumstances in the case in hand as well as upon hearing the learned Counsels for the parties, we are of the firm view that this case does not fall within the purview of Section 302 of the IPC, but it is a case for conviction under Section 304

Part-II IPC. Accordingly, we set aside the conviction of the appellant under Section 302 of the IPC and convicted him under Section 304 Part-II IPC.

15. At this stage, Mr. Singh, learned senior counsel, assisted by Mr. Paul submitted that the appellant was behind the bar for 3 months immediately after the incident and more than 5 years thereafter on conviction since 19.5.2003 and accordingly, a submission is made that considering the period of incarceration as aforesaid, the appellant may be sentenced to the period he had already undergone.

16. Having gone through the entire records and considering the submissions of the learned Counsel for the parties, we accept the submissions made by the learned Counsel for the appellant.

17. Accordingly, we are inclined to sentence the appellant for the period already undergone. It is ordered accordingly.

18. The appellant be set at liberty forthwith if he is not wanted in any case otherwise.

19. Send down the Lower Court record forthwith.

20. In the result, the appeal stands partly allowed with the modification to conviction and sentence as indicated above.