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Ramjitanti Vs. State of Assam

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Court : Guwahati

Decided On : Feb-01-2005

Judge : P.G. Agarwal and A. Hazarika, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302

Appeal No. : Criminal Appeal No. 12(J) of 1996

Appellant : Ramjitanti

Respondent : State of Assam

Advocate for Def. : F.H. Laskar, Adv.

Advocate for Pet/Ap. : G. Uzir, Amicus Curiae

Prior history : P.G. Agarwal, J. 1. Heard Mr. G. Uzir, the learned Amicus Curiae for the accused appellant and Mr. F.H. Laskar, the learned P.P. 2. This appeal is directed against the Judgment and Order dated 13.12.95 passed by the Sessions Judge, Dibrugarh in Sessions Case No. 148 of 1992 (GR Case No. 910 of 1992) convicting the accused appellant Under Section 302 IPC and sentenced to imprisonment for life and to pay a fine of Rs. 500/- in default further imprisonment for six months. 3. On 21.6.1992 Saudakar

Judgement :

P.G. Agarwal, J.

1. Heard Mr. G. Uzir, the learned Amicus Curiae for the accused appellant and Mr. F.H. Laskar, the learned P.P.

2. This appeal is directed against the Judgment and Order dated 13.12.95 passed by the Sessions Judge, Dibrugarh in Sessions Case No. 148 of 1992 (GR Case No. 910 of 1992) convicting the accused appellant Under Section 302 IPC and sentenced to imprisonment for life and to pay a fine of Rs. 500/- in default further imprisonment for six months.

3. On 21.6.1992 Saudakar Tanti lodged written FIR (Ext. 2) before police stating, inter alia, that on that day at about 10 AM the accused appellant Ramji Tanti had an altercation with the younger brother Gobin Tanti and thereafter the accused appellant picked up a dao and hacked the deceased by shivering the neck from the body. Police registered a case and after usual investigation submitted charge sheet.

The accused was tried by the Sessions Judge, Dibrugarh for the offence Under Section 302 IPC and during trial as many as seven witnesses were examined. The trial court convicted the accused appellant Under Section 302 IPC and sentenced to imprisonment as stated above. Hence the present appeal.

4. PW 1 is Dr. M.N. Gogol who held the autopsy over the dead body and found as follows : -

'One male dead body of average built. The head was detached from the neck by a clean-cut incised wound at the level of 3rd and 4th cervical vertebrae. The detached head completely fitted with the neck portion of the said dead body, which clearly suggested that the said two parts belonged to the same individual. The size of the incised wound was 20 cm x 2 cm. cutting the skin, muscles, blood vessels, nerves, trachea, oesophagus and spinal Cord.

Injury No. 2 - One incised wound in the right axillary region of size 11 cm, x 4 cm, cutting the skin and muscles.

On examination of Cranium and spinal cannal 1 found as follows : -

Scalp and skull were healthy. Vertebrae - injury as described under injury No. 1 above. Spinal Cord - injury as described under injury No. 1 above.

On examination of Thorax, I found as follows : -

Trachea was completely cut under injury No. 1 above. Heart was empty and healthy.

On examination of Abdomen, I found as follows : -

Oesophagus was found completely cut under injury No. 1.

Other organs were healthy. Stomach was found healthy and empty.'

5. In the opinion of the doctor, the death was due to shock and haemorrhage resulting from antemortem injuries caused by heavy sharp cutting weapon. The injuries were homicidal in nature and sufficient to cause death in ordinary course of nature. The doctor has also opined that the injuries on the person of the deceased may be caused by M. Ext. 1 dao. The medical evidence as such has not been challenged and in view of the overwhelming oral evidence as regards the death of the deceased, we hold that the trial court lightly held that this is a case of homicide.

6. In the present case, the incident took place around 10 AM on a puja day where a puja was organised by the management of Tingkhong Tea Estate. Saudakar Tanti (PW 2) is the eye witness to the occurrence and he has deposed that on that day around 9 AM an altercation took place between the deceased and the accused appellant as regards shifting of the temporary bamboo bridge near the puja place and thereafter around 10 AM while the deceased was moving with a basket in his head, the accused came out with a kalam katary, a pruning knife used by the tea garden labourer to prune the tea bushes and the accused gave a blow on die neck of the deceased as a result of which the deceased fell down. The accused picked up the head of the deceased, which was shivered from the body and moved around with a dao on the other hand. Police was informed and police arrived at the tea estate. The accused threw the head and ran away but he was overpowered and apprehended by police along with the weapon of assault. The

FIR was lodged by PW 2 Soudakar Tanti Durlav Tanti (PW 3) and Manoj Kr. Thakur (PW 4) are the two other tea garden residents and they deposed that they saw the accused Ramji moving around the garden with the beheaded head of Gobin and the pruning knife on the other hand and thereafter on arrival of police, the accused tried to flee by throwing the head but he had been overpowered. The knife was seized in presence of PW 3 by police and M. Ext. 1 is the said knife. PW 5 had informed police about killing of Gobin as per die instruction of the Manager of the said tea estate.

7. PW 6 Dina Konwar is the investigating police officer of the case. He has deposed that on receipt of the information which was recorded as entry No. 340, he along with police staff came to the tea estate and saw the accused standing on the road holding a beheaded head and a dao in his hand and seeing police, the accused threw away the head and ran away. Police also chased the accused and apprehended him and seized M. Ext. 1 dao. Thereafter on being led by PW 2 they came to the place of occurrence and found the torso of the said Gobin lying in the dram. He held an inquest by joining the said head and torso and prepared the inquest report.

8. We have perused the evidence of the prosecution witnesses on record and find that there is no meaningful cross-examination except some stray suggestion. Moreover, the accused was seen assaulting the deceased in the broad day light and thereafter the accused was seen moving in the garden with the shivered head of the deceased and the weapon of assault (dao). The weapon of assault was seized by police. The trial court for the reasons mentioned in the impugned judgment held that the prosecution witnesses are reliable and trustworthy. PW 2 is no doubt the brother of the deceased but admittedly neither the deceased nor die brother had any animus with the accused and there is no reason to disbelieve this eye witness. For the reasons mentioned in the impugned judgment we concur with the finding of the trial court that it was the accused appellant alone who killed the deceased by hacking him.

9. The learned Amicus Curiae has submitted that in this case, the prosecution has not been able to make out a case to bring home any motive on the part of the

accused appellant to toll the deceased and the incident took place out of a petty dispute regarding shifting of the temporary bamboo bridge. Admittedly, there was no motive or no motive has been established by the prosecution for killing the deceased.

10. The law is well settled that in case where there is direct evidence, motive becomes irrelevant. However, the court is required to ascertain as to what was the impelling reason on the part of the accused to commit the come. We find that in the instant case immediate cause was altercation taking place between the deceased and the accused appellant for shifting of a temporary bamboo bridge.

11. The learned Amicus Curiae has also submitted that this being a case of single blow, the act of the accused may not constitute the offence of murder Under Section 302 IPC. So far the facts are concerned, we find that the doctor has categorically deposed that there are two injuries one on the head and the other on the neck, which completely shivered the head from the body. Moreover, in the case of Mahesh Balmiki v. State of Madhya Pradesh, reported in (2000) 1 SCC 319, the Apex Court held that there is no principle that in case of single blow, Section 302 IPC is not attracted. It was further observed by relying on its earlier decision in the case of Joy Prakash reported in (1991) 2 SCC 32 that in a given case, the single blow may entail conviction Under Section 302 IPC. The question has to be determined on the facts and circumstances of each case, such as, the nature of injury, site of the injury- whether on the vital or non-vital part of the body, weapon used, etc., etc.

12. Considering the facts and circumstances of the case, we have no hesitation to hold that the intention of the accused appellant is writ large and the act of the accused constitutes an offence punishable Under Section 302 IPC.

13. In the result, we find no merit in the appeal and the conviction of the accused appellant Under Section 302 IPC is affirmed. So far the substantive part of the sentence is concerned, it was the minimum under the law and no interference is called for. It is, however, provided that in default of payment of fine of Rs. 500/-, the accused appellant shall undergo further imprisonment for 15 days only.

14. The appeal stands disposed of accordingly. The fee of the Amicus Curiae is fixed at Rs. 2500/-.

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