

Phatik Das Vs. State of Assam

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Court : Guwahati

Decided On : Oct-27-2003

Judge : S.K. Kar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304

Appeal No. : Criminal Appeal No. 146(J) of 1998

Appellant : Phatik Das

Respondent : State of Assam

Advocate for Def. : P.C. Gayan, P.P.

Advocate for Pet/Ap. : D. Talukdar, Amicus Curiae

Judgement :

S.K. Kar, J.

1. This is a jail appeal. Learned advocate Mr. D. Talukdar was appointed as Amicus Curiae. Heard both sides.

2. Briefly stated, the prosecution case is that at about 7 p.m. at Mirza Batiapara, one Kandarpa Das was assaulted with a 'Tangon' (a piece of wood) resulting in his death. The court below tried appellant/accused after framing charge Under Section 302 IPC and sentenced him to R.I. for 10 years and to a fine of Rs. 2000, in

default of fine, to suffer R.I. for another 6 (six) months, by the judgment and order dated 23.3.1998 passed by Additional Sessions Judge, Kamrup, Gauhati, in connection with case No. 82(k-G) of 1991.

3. The prosecution examined altogether 10 (ten) witnesses including the doctor of the I.O. I find the P.Ws. examined were quite dependable and trustworthy. P.W. 1 was free from emotion and her evidence implicating the appellant remained un rebutted, and steady, well-corroborated by the rest of the P.Ws. examined.

4. The defence plea, particularly as per the statements Under Section 313 Cr.PC, is that the appellant/accused assaulted the deceased in self-defence, when the deceased wanted to strike him with an axe, but without any intention to kill him.

5. Learned amicus curiae appearing for the appellant without challenging the findings of facts arrived at by the learned court below has restrained his submission only on the question of sentence.

6. Although the charge was framed Under Section 302, learned trial court while recording the judgment had slid down the same to one Under Section 304 part II (later part), convicted and sentenced the accused/appellant accordingly as stated above. It is also submitted at the bar that all along the appellant was in custody and now he had spent 5 years 10 months and few days in prison, offence Under Section 304 Part II is punishable with imprisonment of either description for a term which may extend to 10 years or with fine or with both if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or such bodily injuries as in likely to cause death. Therefore, 10 years is the maximum period of sentence prescribed by law for the offence in question but in the instant case it is the admitted position that the assault followed an altercation between the appellant and the deceased. P.W. 1 (Smt. Anima Das) wife of the victim, has clearly stated that an altercation preceded the assault in question. Therefore, taking the overall factual situation in this case a lower sentence is the proper sentence to met the ends of justice as was rightly submitted by learned Amicus Curiae.

7. In the result, the appeal is partly allowed. While the conviction Under Section 304, Part II is maintained the sentence is reduced to period already undergone in jail by the appellant.

8. Let the copy of the judgment be urgently sent to the Jail Superintendent of the concerned Jail for appropriate follow up action.

9. Send back case record immediately.

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