

Kunja Behari Singh Vs. State of Assam

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Court : Guwahati

Decided On : Mar-08-2001

Judge : J.N. Sarma and Ranjan Gogoi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 307 and 326; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313 and 374(2)

Appeal No. : Criminal Appeal No. 57(J) of 1997

Appellant : Kunja Behari Singh

Respondent : State of Assam

Advocate for Def. : Mr. K. Deka, PP

Advocate for Pet/Ap. : Mr. H.R.A. Choudhury, Mr. A.S. Choudhury and Mr. K.A. Majumdar, Advs.

Disposition : Appeal allowed

Judgement :

1. This appeal under Section 374(2) of the Code of Criminal Procedure, 1973 is directed against the judgment and order dated 16.12.1996 passed by the learned Session Judge, Cachar at Silchar in Sessions Case No. 71/96 whereby the accused has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The prosecution case in brief is that on 8.4.1996 at about 4 P.M. the accused Kunja Behari Singh allegedly assaulted his wife Smt. Bhagyabati Devi with a dao at his own residence as a result of which she succumbed to her injuries at Silchar Medical College Hospital after two days of the incident. P.W. 1 Tanu Singh, uncle of the deceased lodged an FIR before the In-charge of Kachudaram Police Outpost under Sonai Police Station and on the basis of the said FIR, the police initially registered a case under Sections 326/307 of the Indian Penal Code and started investigation thereof. In the course of investigation, the police visited the place of occurrence, arrested the accused and seized the alleged weapon of offence namely, a dao (M.Ext.1) on the same being produced by one Nangitorabi Devi, PW 5 vide seizure list (Ext.2). While the case was under investigation, the injured Bhagyabati Devi succumbed to her injuries at the Silchar Medical College after two days from the date of occurrence whereafter the case registered by the Police against the accused proceeded under Section 302 of the Indian Penal Code also. On completion of the investigation, charge-sheet was submitted against the accused under Section 302 of the Indian Penal Code and the case was committed to the Court of Sessions for trial of the accused-appellant. In the court of Sessions, the charge was framed against the accused under Section 302 of the Indian Penal Code. The charge was read over to the accused who pleaded not guilty and claimed to be tried.

3. In the course of the trial, the prosecution examined as many as 8 (eight) witnesses in support of its case including the doctor who conducted the postmortem examination namely, PW 6 Dr. K.K. Chakraborty and the Investigating Officer namely, PW 8 Sarifuddin Ahmed. The accused was examined under Section 313 of the Code of Criminal Procedure. At the conclusion of the trial, the learned Sessions Judge by the impugned judgment and order dated 16.12.1996 has convicted the accused-appellant under Section 302 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life. Hence, the appeal.

4. We have heard Mr. H.R.A. Choudhury, learned advocate on behalf of the accused-appellant and Smt. Kuntala Dek, learned Public Prosecutor on behalf of the prosecution.

5. Mr. Choudhury, learned counsel for the accused-appellant has elaborately taken us through the evidence on record. PW 1 Tanu Singh is the first informant in the case and is an uncle of the deceased. He is not an eye-witness to the incident and had reached the place of occurrence on being informed about the same by the Chowkidar of the M.E. School of Jamalpar. P.W.2 is the father of the deceased and was reported about the incident in the market by some people whereafter he reached the place of occurrence and immediately thereafter he lost consciousness. In his evidence, PW 2 has stated that at the place of occurrence he found the accused being surrounded by the villagers and his daughter lying in an injured condition in the kitchen. P.W.3 is a neighbour who has stated that on the day of occurrence while he was taking his buffalo to his house from the field, he heard a scream from the house of the accused where he rushed to the place of occurrence and saw the deceased lying in an injured condition in the kitchen. P.W.3 has also stated that on the day of occurrence after the incident Nangbitom Devi, P.W. 5 produced a dao before the police which was seized vide Ext. 2 seizure list. P.W. 4 who is also related to the accused has stated in her evidence that on the day of occurrence in the evening while she was proceeding to the house of the deceased, from the cow-shed she heard an alarm uttering 'Jethima'. She immediately rushed to the kitchen and found the deceased in an unconscious and injured condition and she immediately raised an alarm. She found the accused sitting on the veranda weeping. Soon other people of the village arrived at the place of occurrence. P.W. 4 has stated that she was near the cowshed and both the accused and the deceased were in the house. In cross examination, this witness, however, stated that at the time she heard the alarm 'Jethima', the accused was inside the temple and the distance between the temple and the house of the accused would be about 300 ft. She has also stated in her cross examination that when she raised alarm many people along with the accused came to the place of occurrence. P.W. 5 Nangbitom Devi In her evidence has stated that on the day of occurrence while she was taking bath, she heard an alarm raised by an old woman. Hearing the scream, she rushed towards the house of the accused and found the deceased lying injured. P.W. 5 was declared hostile by the prosecution and she denied of having made any statement before the police to the effect that she herself along with some others had tried to snatch

away the dao from the hands of the accused. She has also denied of having handed over the dao to the police on the next following day of occurrence.

6. P.W. 6 Dr. K.K. Chakraborty conducted post-mortem examination on the dead body of the deceased and found as many as five injuries which are abstracted below:

"INJURIES :-

1. One stitched wound on the back of the neck - stitches removed and found cut injury on the back of the neck measuring 11 x 2 c.m. x Bone Deep upto the 3rd cervical vertebrae with cut in the 3rd cervical vertebrae.

2. A cut injury on the left shoulder in back 4 1/2 x 1/2 x 1/4 CM.

3. A cut injury on the right mastoid region of the scalp measuring 5 x 3 x 1/2 cm.

4. Contusion on right knee in front 7 x 3 cm.

5. Scald on the right great toe 3 x 2 cm."

7. P.W. 7 Kshitish Chandra Das, ASI of Police held inquest on the deadbody and prepared inquest report, Ext.4 PW.8 Safir Uddin Ahmed is the investigating officer and at the place of occurrence, he prepared a sketch map, Ext. 8 and has also deposed as to seizure of the dao, Mat.Ext. 1 vide seizure list - Ext.2.

8. On perusal of the evidence, it clearly transpires that the prosecution case is sought to be built up on circumstantial evidence as evidently there was no eye-witness to the incident. The law relating to circumstantial evidence is well settled and it would suffice to say that the Apex Court in S.D. Soni v. State of Gujarat reported in AIR 1991 SC 917 has held as follows:-

"...Needless to say that in a case in which the evidence is of a circumstantial nature the facts and circumstances from which the conclusion of guilt is said to be drawn by the prosecution must be fully established beyond all reasonable doubt and the facts and the circumstances so established should not only be consistent with the guilt of the appellant but also they must entirely be incompatible with the

innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence...."

9. In the above context, let us now examine what are the circumstances against the accused as proved by the evidence on record beyond all reasonable doubt on the basis of which the prosecution seeks to make out a case which is only consistent with the guilt of the accused in order to make the accused culpable under Section 302 of the Indian Penal Code.

10. Admittedly, the prosecution has not ascribed any motive in the alleged crime. However, that by itself would not demolish the prosecution case if there is other cogent and reliable evidence on the basis whereof it is possible to weave a chain of circumstances pointing to the guilt of the accused and the accused alone. P.W.4 who appears to be the key witness for the prosecution has given two apparently contradictory versions of the incident. On one hand, the witness had deposed that when she was near the cow-shed, she heard an alarm uttering 'Jethima' and immediately thereafter she rushed to the kitchen and found the deceased lying in an injured condition and the accused was sitting on the veranda weeping. The other people of the village, according to the witness, came to the place of occurrence thereafter. This witness also deposed that when she was near the cowshed, the accused and the deceased were together in the house. However, in cross examination, this witness has stated that at the time when she heard the alarm 'Jethima', the accused was inside the temple. There is reference to a 'Mandap' in the sketch map, Ext. 8. This 'Mandap', according to this witness, is about a distance of 300 ft from the house of the accused. This witness has also stated in cross examination that when she raised alarm after seeing the deceased lying in an unconscious condition in the kitchen, many people along with the accused came to the place of occurrence. From the evidence of P.W. 6, it is crystal clear that the death was caused by a sharp weapon, Material Ext. 1 was seized on the day following the day of occurrence and there is no explanation forthcoming as to why seizure was not made when the police first visited the place of occurrence. The circumstances in which P.W. 5 is alleged to have handed over the weapon of offence to the police has also not been explained in any manner by the prosecution.

11. In view of the foregoing discussion, we are left with no doubt in our minds that the prosecution has not been able to establish beyond all reasonable doubt a case which is only consistent with the guilt of the accused and also which is entirely incompatible with the innocence of the accused. The conviction and sentence as recorded by the learned Sessions Judge cannot, therefore, be upheld and the same is accordingly, set aside and the accused-appellant is acquitted of the charge framed against him. The appeal stands allowed. The appellant be set at liberty forthwith.

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