

Ranadhir Gupta Vs. State of Assam

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Court : Guwahati

Decided On : Jun-25-2007

Judge : D. Biswas and A. Hazarika, JJ.

Appellant : Ranadhir Gupta

Respondent : State of Assam

Judgement :

D. Biswas, J.

1. This appeal is directed against the Judgment dated 16.2.2006 passed by the learned Sessions Judge, Karimganj in Sessions Case No. 39/2004.
2. The learned Sessions Judge by the impugned Judgment convicted the accused Ranadhir Gupta Under Section 302 IPC for causing death of his brother Chandan Gupta and sentenced him to R/I for life and to pay a fine of Rs. 5000/-, in default of payment, to further imprisonment for three months. Being aggrieved thereby, this appeal has been preferred challenging the legality and validity of the Judgment passed by the learned Sessions Judge.
3. This is a case where two brothers were living together in the same campus with their respective families along with their old parents. On the day of occurrence i.e. 12th August, 2001, the parents were away from home. The younger brother Chandan along with his son was watching TV in their house. At that time, the

accused Ranadhir came, pulled out the plug from the switchboard and wanted to take the TV to his room. The deceased Chandan resisted and, at that time, the accused dealt with a dagger blow on the belly of the deceased causing his death.

4. Mr. HRA Choudhury, learned Senior Counsel for the appellant submitted that the evidence on record establish the fact that the accused had caused death of his younger brother during the course of a dispute relating to removal of the TV from the room of the deceased to his own room. Mr. Choudhury further submitted that the evidence on record disclose that they were in a common mess and the relationship between the two was cordial except occasional petty quarrels over accounts of the joint business. This, according to Sri Choudhury, cannot be a ground to attribute criminal intent on the part of the accused to kill his younger brother. In the facts and circumstances of the case, according to Sri Choudhury, the accused is liable to conviction Under Section 304 Part-II IPC.

5. Before we discuss the evidence on record in order to appreciate the argument of Mr. Choudhury, we may quote herein below the evidence of Dr. NazimUddin Ahmed who had performed the post mortem examination on the dead of the deceased:

An average built healthy male face is pale, mouth half open, eyes half open, pupil dilated, rigor mortis present, Age about 40 years. The following were the injuries (1) An incised penetrating wound 3' long over right side of epigastrium edges are everted, gaping & swollen. The wound penetrates into right loin cutting internal structure with a wound in the right 1' long edges are everted and gaping & swollen. Colour of the base of the wounds were raddish.

Scalp skull, vertebrae-Healthy, Membrane-Healthy & pale, Brain and spinal cord-Healthy and pale.

Thorax

Walls ribs and cartilages, pleurae, Larynx and trachea Right lung, Left lung, Pericardium-Healthy, Heart-Healthy and contain dark liquid blood, Vessels-Healthy.

Abdomen

Walls-wound in the epigastrium and right loin as described in column-1. Peritonium-incised on the epigastrium and right loin and cavity contains profuse haemorrhage, Mouth Pharynx, oesophagus-Healthy, Stomach and its contents-Incised on the lesser curvature 1' long wound. Small intestine and its contents-Jejunum is incised at 10' and 15' from duodenum. There are 1' long wound on either side at these lengths. Large intestine and its contents-Incised at ascending colon with 1' long wound on the either side. Liver-Right lobe of liver is incised by a wound 2 and 1/2' long. Spleen-Healthy and Pale. Kidneys-Pale and Healthy, Bladder-Healthy and contains urine, Organs of generation, external and internal-healthy.

Muscles, Bones and Joints.NIL

There is an incised penetrating wound 3' long over the right side of epigastrium that passes through the right side of abdomen cutting right lobe of liver, peritoneum, jejunum and ascending colon with profuse haemorrhage and expressing over the right loin by an incised wound 1" long.

6. It would appear from the evidence of PW1 that the deceased had sustained only one incised wound on his belly and succumbed to the injuries, as alleged by the prosecution. The medical officer did not say that the injury caused was sufficient in ordinary course to cause death.

7. From the evidence of PW2 Smti Soma Gupta, wife of the deceased, we find complete corroboration to the prosecution case, as alleged in the first information report. This witness stated that around 2.30-3 PM, her husband was viewing TV sitting on a sofa while her son Chiranjeev was sitting on the bed. Her two daughters Chandrani and Falguni were in the next room. After hearing a commotion she went to the drawing room and saw a blood stained 'Bhojoli' in the hand of the accused. Blood was oozing out from the belly of her husband. She was immediately told by Chiranjeev that the accused had stabbed the deceased. She further stated that her husband was taken to hospital in an auto rickshaw. The doctor there told them that her husband would not be given any medical treatment till arrival of the police. Thereafter, around 4 O'clock her husband died.

8. The evidence of PW2 stands well corroborated by the evidence of PW3 Chiranjit Gupta who was sitting with his deceased father and watching TV at the time of occurrence. The evidence of PW2 and 3 clearly establish the prosecution charge brought against the accused of killing his younger brother over the issue of possession of TV. The defence could not elicit anything out of them during the course of examination rendering their evidence unworthy of credence.

9. PW4 Sri Ranjit Gupta is the father of the accused as well as the deceased. He was not at home at the time of occurrence. He deposed that after his arrival, he was told that his younger son Chandan was killed by the accused over a dispute relating to TV. This witness further stated that there was no dispute between his two sons and they were in good terms, though his younger son (deceased) used to drink liquor.

10. PW5 Smti Usha Rani Gupta is the mother of the accused as well as the deceased. She is also a reported witness. She came to know about the occurrence from PW2. In her cross-examination she stated that her younger son Chandan was a drunkard and he used to drink heavily on holidays. But she maintained that both the deceased and the accused had been on good terms.

11. The evidence of the PWs narrated above in brief prove the fact that the accused had dealt with a dagger blow on the belly of his younger brother over a dispute relating to possession of a TV purchased by their father. The deceased had resisted the attempt made by the accused to take away the TV to his room and in that process, the accused had suddenly dealt with one dagger blow on the belly of his younger brother.

12. From above, it appears that the intention of the accused was to take away the TV and not to kill his younger brother. There is also no evidence to show existence of any deepseated enmity between the two brothers for which one could think of eliminating the other. Though they had quarreled over minor issues, by and large their relationship was cordial. All of them lived Jointly with their old parents who had testified about the good relationship between the two brothers. In view of these facts, it would be difficult to attribute any motive or intention on the part of the accused. The occurrence took place all on a sudden and obviously in a heat of

passion arising out of a quarrel over the TV set. For this reason, we are of the opinion that the provisions of Exception 2 to Section 300 IPC are squarely applicable in the instant case. Exception 2 reads as follows:

Exception 2.--Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Explanation:

It is immaterial in such cases which party offers the provocation or commits the first assault.

13. From above it would appear that if death occurs under the circumstances mentioned therein, it is immaterial which party offers the provocation or commits the first assault. There is also no evidence of any undue advantage taken by the accused. Perhaps the life of the deceased could have been saved had he been given immediate treatment when shifted to hospital. PW2 evinced that the doctor on duty told her that medical aid would be provided after arrival of police.

14. We have scanned the evidence on record minutely and are unable to trace out any reason for which the accused could have killed his brother. In our opinion, the case falls under Exception 2 to Section 300 IPC and therefore punishable Under Section 304 Part-II of the IPC.

15. For reasons above, the conviction of the accused is reversed. Consequently, the accused Randhir Gupta stands convicted Under Section 304 Part-II IPC and on such conviction, he is sentenced to undergo imprisonment for a period of 3 years and to pay a fine of Rs. 1 lakh (Rupees one lakh) only, in default of payment, to undergo further imprisonment for 6 months.

16. The fine amount, if realized, shall be paid to PW2 Smti Soma Gupta, wife of the deceased. If the fine is not paid by the accused, the learned Sessions Judge shall take appropriate steps for realization of the amount by seizure and sale of the

personal properties of the accused. Send down the case records forthwith along with a copy of the Judgment.

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