

Arjun Kumar Vs. State of Assam

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Court : Guwahati

Decided On : Jan-16-2009

Judge : Amitava Roy and C.R. Sarma, JJ.

Acts : Indian Penal Code (IPC) - Sections 302, 304, 323 and 326; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : CrI. A(J) 38 of 2003

Appellant : Arjun Kumar

Respondent : State of Assam

Advocate for Def. : Z. Kamar, PP

Advocate for Pet/Ap. : R. Goswami, Amicus Curie

Judgement :

1. This appeal from jail is directed against the judgment and order dated 21/11/2002 passed by the learned Additional Sessions Judge-I (Adhoc), Tinsukia in Sessions Case No. 67(T)/2002 convicting the accused appellant under Sections 302 and 323 of the Indian Penal Code (for short hereafter referred to as the Code). Thereby he was sentenced to undergo rigorous imprisonment for life for his conviction under Section 302 of the Code and was required to pay a fine of Rs. 500/- for his conviction under Section 323 of the Code in default to suffer rigorous imprisonment for 10 days.

2. We have heard Mr. R. Goswami, learned Amicus Curiae for the accused appellant and Mr. Z. Kamar, learned Public Prosecutor, Assam.

3. The prosecution case unfolds with the FIR dated 15/1/2001 lodged by one Shri Amit Nayak with the Office-in-Charge, Tinsukia Police Station alleging that the accused appellant had in the previous night of 14/1/2001 assaulted his elder sister, Smt. Lakheswari Dhani. It was further stated in the FIR that on the informant's visit at the residence of the accused appellant next morning his younger sister, Joysree Dhani, was found lying dead in the house.

4. On the FIR, the Police registered Tinsukia P.S. Case No. 9/2001 under Section 302/326 of the Code and on the completion of the investigation submitted charge sheet against the accused appellant under the aforementioned provisions thereof. The case being triable exclusively by a Court of Sessions, the same was committed thereto and eventually on being forwarded to the Court of the learned Additional Session Judge-I, Tinsukia charge was framed against him (accused appellant) under the above sections of law. The charge when explained to the accused appellant, he pleaded 'not guilty' and claimed to be tried. In course of the trial, the prosecution examined six witnesses including the investigation officer. The appellant was examined under Section 313 of the Criminal Procedure Code. He, however, declined to adduce any evidence in defence. The learned Trial Court, after hearing the Counsel for the parties and on a consideration of the materials on record convicted and sentenced the accused appellant as aforementioned.

5. The learned Amicus Curiae has emphatically urged that a bare reading of the FIR, Exhibit 3, would demonstrate that the identity of the injured Smt. Lakheswari Dhani, (PW-2), is in doubt rendering her evidence wholly uncreditworthy. There being no eye witness to the alleged offence, according to the learned Counsel, the case of the prosecution is liable to be rejected. He insisted with all emphasis at his disposal that even if the evidence of PW2 is accepted in its entirety, the offence with which the accused appellant had been charged had not been established. The learned Amicus Curiae also referred to the evidence of PW-1, PW-2, PW-3, PW-4 and PW-5 to bring out the inconsistencies in the matter of seizure of the

weapon of assault, the Bamboo lathi. According to the learned Amicus Curiae, having regard to the weapon of assault, by no means, even if the evidence of PW-2 is accepted, the intention of the accused appellant to murder the deceased is proved and, therefore, his conviction under Section 302 of the Code is ex-facie illegal and is liable to be interfered with. He also discarded the prosecution case on the ground of omission to examine any independent witness of the alleged offence. Mr. Goswami urged that the failure of the prosecution to record the confession of the accused appellant and to send the weapon of assault said to be stained with blood for forensic examination is fatal to the prosecution. He criticized the delay on the part of the investigation authority to visit the place of occurrence and contended that the medical evidence on the injuries is also unacceptable in law. Without prejudice to the above, the learned Amicus Curiae has argued that in any view of the matter, having regard to the relationship of the parties, the weapon of assault and the injuries inflicted thereby as alleged, the conviction of the accused appellant under Section 302 is obviously untenable and at the most the offence ought to be brought under Part II of Section 304 IPC.

6. Mr. Kamar in reply has urged that the charge against the accused appellant having been proved to the hilt, the impugned judgment and order cannot be faulted with. He dismissed the so called confusion with regard to the identity of PW-2 by referring to the charge framed against the accused appellant and also the evidence of PW-1 and PW-2. He urged that the testimony of PW-2, the eye witness, being clear and convincing, there is no scope to doubt that the accused appellant was the assailant and having regard to the injuries sustained by the deceased, his clear intention to murder the deceased is apparent. In support of his contention, Mr. Kamar has taken the Court through the evidence on record more particularly the inquest report and the injury report vis-à-vis the PW- 2 and the Post Mortem report.

7. Before recording our findings on the rival arguments advanced, it would be appropriate to briefly survey the evidence on record. The informant PW-1 is the brother of both the injured as well as the deceased. He testified that on the date of occurrence at about 10 P.M. at night, his sister Lakheswari came to his house and reported to him that the accused appellant had assaulted his wife, the deceased.

She further alleged that she had also been assaulted by the accused appellant and that she had scooted after sustaining injuries. The witness confirmed of having seen bleeding injuries over her forehead. According to the witness, contemplating that the assault by the accused appellant on his wife had stemmed from a quarrel between the couple, he decided to visit them the next morning. However, on his said visit, the next date, he found his sister Joysree Dhani lying dead on the bed with injuries on the right side of the waist, chest and neck. The witness also stated to have met the accused appellant in the house who on being queried informed that his wife had expired in the night. The witness stated that the FIR was lodged by him being written by one Kuku Das. According to the witness, the police visited the place of occurrence and seized one Bamboo lathi from the house of the appellant. The witness deposed that the said lathi was handed over to the Police by his sister Smt. Lakheswari stating that the same was the weapon of assault. In his cross-examination, the said witness confirmed that the length of the lathi was about three feet and was of a split bamboo. He also disclosed that there was no other house near the house of the accused appellant. He stated that his house was at a distance of one mile from that of the accused appellant.

8. PW-2, Smti. Lakheswari Dhani, stated on oath that on the date of occurrence, at about 9-10 P.M., a quarrel between the accused appellant and the deceased took place and the former started assaulting the latter with a bamboo lathi. As she tried to intervene, the accused appellant also assaulted her as a result of which she sustained injuries on her forehead. Being injured, she scurried to the house of PW-1 and reported to him the incident on which the latter expressed his desire to visit the place of occurrence in the following morning. The witness asserted of having seen the accused appellant assaulting the deceased by the lathi on her back. She further stated that at about 12 Noon next day, she visited the place of occurrence and found her sister lying dead there. She further stated that the accused appellant brought out a lathi and handed over the same to the Police admitting of having killed the deceased with the same. In cross-examination, the said witness however admitted of not noticing the injuries sustained by the deceased.

9. PW-3, is another brother of the deceased. He did not see the incident and visited the place of occurrence on hearing the hue and cry that his sister had been

killed. He testified of having come to the house of the accused appellant to find his sister lying dead in the house. He saw blood oozing out from the mouth of the deceased. He also confirmed of the accused bringing out one lathi from the house and handing the same over to the Police. He further stated that the Police seized the lathi vide Exhibit 1 on which he put his signature, Exhibit 1(4). He also deposed that Smt. Lakheswari Dhani came to his house to show the injuries sustained by her as a result of the assault made. On cross-examination, this witness stated that the Lathi was a split bamboo stick of about three and half feet length. 10.PW-4, Dr. Sailendra Kumar Sarma, stated about the injuries sustained by Smt. Lakheswari Dhani on 16/1/2001 as hereunder.

On examination One old cut injury over left forehead over the eye brow 2' x 1/2 ' x 1/2' size, incised looking.

According to the medical expert, the injuries were caused by blunt object and were simple in nature. He proved Exhibit 2, his report with his signatures Exhibit 2(1) and Exhibit 2(2). PW-6, Dr. B.C. Roy Medhi, who performed the autopsy on the dead body stated to have found the following injuries.

Injuries: 1. Patterned abrasions with bruised margin 8 x 1 c.m. on back or right chest wall 11 cms right to midline and 4 cms below the inferior angle of scapula.

2. Three numbers of parallel abrasions with bruised margin at 1 cm apart on back of right chest wall over scapula 10 x 1 cm each.

3. Multiple patterned bruises over buttocks, over sacrum, and over lower part of back of abdomen.

4. Lacerated injury 2 x 1 cm present on left occipital regions, 5 cms left to midline.

5. Lacerated injury 1 x 0.5 c.m. on left occipital regions.

6. Abrassion with lines scattered on interior aspect of left thigh and left leg.

7. Lacerated injury present on base of dorsum of third, fourth and fifth finger on left hand (defence wound).

This witness opined the cause of death to be the injuries sustained on the head. He confirmed the injuries to be antemortem and homicidal in nature and caused by blunt impact. According to this witness, injuries sustained on the head were sufficient to cause death of a person. He proved the postmortem report, Exhibit 5 and his signature thereon Exhibit 5(1). The defence declined to cross-examine this witness.

11. PW-5 is the Investigating Officer. He proved the seizure list and the lathi, Exhibit-1, the FIR, Exhibit-3 and the sketch map. In cross examination, this witness stated that he had not prayed for recording of the confession of the accused appellant and had also omitted to forward the seized lathi for the forensic examination of the blood stain thereon.

12. Having regard to the evidence on record, more particularly that of PW-1 and PW-2, we do not feel persuaded to sustain the plea of confusion, if any, with regard to the identity of the injured. We have perused the FIR in original and on a juxtaposition of the testimony of PW-1 and PW-2, it is apparent that the injured referred to therein is the sister of the informant named Smt. Lakheshwari Dhani, PW-2 in the case. The evidence of PW-2 fits in with the version as set out in the FIR said to have been drawn up on the inputs made by PW-1, the informant. The testimony of PW-1 lends support to this proposition.

13. PW-2 is the only eyewitness to the incident. On a scrutiny of her statement on oath, we do not find any reason to disbelieve her as such. According to her, in the night of occurrence, following a quarrel between the accused appellant and his wife, the deceased, the former assaulted the latter with a bamboo stick. As she attempted to separate the warring couple, the accused appellant also assaulted her for which in order to escape his wrath, she left the place of occurrence and reported about the incident to the informant PW-1. Though the defence had sought to suggest that the deceased in an intoxicated state had fallen to sustain the injuries, noticeably there is no attempt on its part to introduce any other plea of alibi to unmistakably rule out the involvement of the accused appellant causing the injuries ultimately leading to the death of the deceased. If the evidence of PW-2 is believed, she left the place of occurrence on that fateful night while the deceased

was in the process of being assaulted by the accused appellant. PW-1 and PW-2 when visited the house of the accused appellant next day, found his wife to be dead in the meantime. The accused appellant also confirmed the death of his wife in course of the night. The injuries sustained by the deceased, as the post mortem report reveals are multiple in nature demonstrating that she had suffered more than three injuries on the head and/or in the region in the vicinity thereof. PW-6 has in categorical terms opined that the head injuries were sufficient to cause the death of any person. PW-2 in her evidence in clear terms had stated that she had seen the accused appellant assaulting the deceased by a lathi on her back. The medical evidence fits in with the ocular evidence of PW-2. The plea now raised on behalf of the accused appellant that the absence of this witness till the death of the deceased disproves the charge against him having regard to a cumulative reading of PW-1 and PW-2 does not commend for acceptance. The omission on the part of the Investigating Agency to record the confession of the accused appellant and to forward the weapon of assault for its forensic examination though not approvable inter alia in our opinion in the facts and circumstances of the case is not fatal for the prosecution. The presence of PW-2 at the place of occurrence also cannot be doubted in view of the injuries sustained by her as endorsed by the testimony of PW-4, which is compatible with the version as set out in the FIR.

14. On a totality of the consideration of the evidence on record, we, therefore, entertain no doubt about the involvement of the accused appellant in the assault of his wife leading to her death.

15. The above conclusion notwithstanding, we have pondered over the sentence to be awarded to the accused appellant. This is in view of the evidence forthcoming, which discloses that the assault was preceded by a quarrel and that having regard to the number of injuries sustained it must have stretched over a period of time in course of which PW-2 seeking to conciliate also got hit and injured. The relationship between the parties also cannot be overlooked. The strata of the society from which they come also cannot be totally forgotten. What actually was the reason for the quarrel to arise and continue, the materials on record do not demonstrate. The weapon of assault applied is admittedly a bamboo stick of three and half feet of length. We are left with the impression in the above

factual premise that had the accused appellant's real intention been to do away with his wife, having regard to the period of assault, he could have searched for a more effective weapon to inflict decisively murderous blows on her. That the actual acts of assault were preceded by a quarrel also demonstrate a possibility that the blows inflicted were in a fit of rage. There is evidence to suggest that the body of the deceased bore old injuries suggesting that such incidents on a much lesser scale had happened in the past as well. Without commenting further on the details on this aspect, suffice it is, according to us, to record that in the facts and circumstances of the case, the accused appellant lacked the intention of murdering his wife. In that view of the matter, the complicity of the accused appellant though proved, the offence ought to be scaled down to one under Section 304 Part-II of the Code. The accused appellant has been convicted in the year 2002 and by this time, as it is submitted at the bar, she has served out over six years of the sentence awarded to him. Mr. Goswami has submitted that the accused appellant in fact was arrested in the year 2001 and since then he is in judicial custody. That makes the total period of detention of the accused appellant more than seven years.

16. On an analysis of the evidence on record and considering the intervening period, we are of the opinion that the corporal sentence awarded to the accused appellant ought to be reduced to that of rigorous imprisonment for eight years. A sentence of fine of Rs. 1,000/- is awarded in default whereof he would be required to undergo rigorous imprisonment for another 15 days for his conviction under Section 304 Part II of the Code. The conviction and sentence under Section 323 of the Code remains uninterfered. Needless to say, both the sentences would run concurrently. The appeal, therefore, stands allowed on a modification of the conviction and sentence as indicated hereinabove.

We place on record our appreciation for the assistance rendered by Mr. R. Goswami, Advocate, and order payment of his professional fee of Rs. 3,000/- to be paid forthwith. The State Government would take necessary steps in this regard at the earliest.