

Keshab Deka Vs. State of Assam

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Court : Guwahati

Decided On : Apr-25-2007

Judge : A.H. Saikia and Hrishikesh Roy, JJ.

Appellant : Keshab Deka

Respondent : State of Assam

Disposition : Appeal dismissed

Judgement :

A.H. Saikia, J.

1. Heard Mr. Sk. Noor Mahammad, learned Counsel who has been appointed today itself as Amicus Curiae in place of Mrs. R. Borbora, the appointed Amicus Curiae as she is not found present when the matter is taken up for hearing although her name has been duly reflected on the board of the regular Part II cause list for the period from 5.3.07 to 27.4.07.

2. Also heard Mr. B.B. Gogoi, learned P.P., Assam.

3. This criminal jail appeal has been directed against the judgment and order dated 17.8.2001 passed by the learned Ad-hoc Additional Sessions Judge, Darrang at Mangaldoi in Sessions Case No. 70 (DMFT) of 2001 convicting the appellant under Section 302 IPC and sentencing him, to undergo R.I. for life with a

fine of Rs. 2000/-, in default, to undergo further R.I. for six months.

4. The prosecution case in short is that on 18.7.99 at about 7 P.M. the appellant had some altercations with the deceased Late Ramani Deka and as a result of such altercations, the appellant grievously injured Late Ramani Deka by giving a dao blow in the neck of the said Deka who died instantly on the spot. Alleging the above incident, one Sri Chamak Ch. Deka P.W.-1 lodged an F.I.R. with Kalaigaon Police Station and on 19.7.99 the police registered a case under Section 302 IPC against the appellant.

5. On the basis of such F.I.R., the investigation ensued and on completion of investigation, the police submitted chargesheet against the appellant under Section 302 IPC.

6. During the trial before the learned Sessions Judge, Darrang at Mangaldoi, to whom the case, being exclusively triable by the Court of Sessions, was committed by the learned Judicial Magistrate 1st. Class, Mangaldoi, the prosecution examined as many as 8 witnesses including Dr. Nirmal Chandra Sarma, P.W.-4, who held the autopsy on the body of the deceased Late Ramani Deka and P.W. 8, the Investigating Officer (I.O.). The relevant documents including the Inquest report and seizure list were being Exhibited as Exhibits 2 and 4 respectively. The appellant was also examined under Section 313 Cr. P.C. and he denied the charge under Section 302 IPC pleading not guilty.

7. On completion of the trial, on proper appreciation of the materials evidence on record both oral and documentary and upon hearing the learned Counsel for the parties, the trial Court found the appellant guilty of the offence under Section 302 IPC and convicted and sentenced him accordingly as mentioned above.

8. Mr. Noor Mahammad, the learned Amicus Curiae, challenging the conviction and sentence of the appellant, has forcefully argued that the learned Ad-hoc Additional Sessions Judge took an erroneous view by misappropriation of the evidence of the prosecution witnesses basically the testimony of P.W.s. 3, 5 and 7 of which P. Ws. 3 and 5 were the sons of the deceased and happened to be the eye witnesses. His argument is that the P.W. 5 categorically in examination-in-

chief deposed that he did not see the occurrence by his own eyes and by that statement itself the entire deposition so rendered by P.W. 5 was dislodged and hence, the same cannot be the basis for conviction and subsequent sentence. The learned Amicus Curiae has also referred to the seizure of the weapon used in the killing i.e. 'Nepali Khukri' referred to in the seizure list, Ext. 4 dated 20.7.99 and the deposition of the Investigating Officer P.W.-8. The learned Amicus Curie has stated that there was an apparent contradiction of the date of the seizure of the weapon in the seizure list being shown as 20.7.99 when inquest report as per evidence of the Investigating Officer (I.O.) indicates the date as 19.7.99. P.W.-8 in his deposition mentioned the date of seizure of the weapon as 19.7.99. Since there is express variation of the date itself, the evidence of P.W.-8 cannot be accepted. Mr. Noor Mahammad has also further submitted that the testimony of P.Ws 3 and 5 cannot be accepted being the child and interested witnesses as both were the sons of the deceased and admitted minors as well. According to him there is a grave doubt as regards the credibility and veracity of their deposition as they are interested and child witnesses in the instant case and even their presence at the place of occurrence was also doubtful.

9. Per contra, Mr. Gogoi, learned P.P., Assam, has submitted that both the eye witnesses namely P.Ws. 3 and 5, Mantu Deka and Jatin Deka respectively were categorical and specific in their evidence as regards the killing of their father by the appellant. Even the deposition of both P.Ws. 3 and 5 were wholly and fully corroborated by the deposition of P.W. 7, Tarun Nath who was an independent witness and P.W.-2, Smt. Padumi Deka, who was the wife of the deceased and mother of P.Ws. 3 and 5. According to him, the presence of both P.Ws. 3 and 5 cannot be doubted rather it was substantiated by the statement of the P.W.-2. It was clear and apparent that the deceased husband of P.W.-2 father of P.Ws. 3 and 5 respectively was called out by the appellant from their house and at that time when the deceased was going out he was followed by both the two sons i.e. P.Ws. 3 and 5. In view of the above, it has been comprehensively argued that the learned Judge was absolutely right and justified in convicting the appellant under Section 302 IPC and sentencing him accordingly.

10. In order to examine the correction of the impugned conviction and sentence, it would be necessary and prudent to appreciate and evaluate the deposition of the witnesses so examined by the prosecution.

11. P.W.-2, the wife of the deceased and mother of both the P.Ws. 3 and 5, testified that on the day of occurrence when her husband was taking tea at his house the appellant arrived and called away him towards his house. P.Ws. 3 and 5 also accompanied their father and immediately thereafter they cried and informed her that the appellant cut their father. Jatindra also cried and narrated the entire incident to her. Both the P.Ws. 3 and 5 told her that their father was cut with a 'Khukri-dao' by the appellant. She immediately rushed to the place of occurrence and saw that her husband was lying on the P.W.D. road with cut injury with his neck and the neck was almost severed. The accused/appellant had already left the place of occurrence. On cross-examination, she reinforced her deposition in chief stating that the appellant called her husband from her house and both of her sons P.Ws. 3 and 5 accompanied their father. On cross-examination she further stated that they did not brew liquor in their house. She denied the suggestion that her two sons Jatin and Mantu were not present with her husband at the time of occurrence. It was denied that her sons did not tell her that the appellant killed her husband.

12. P.W. 3, Shri Mantu Deka, who was aged about 14 years and the eldest son of the deceased, deposed that on the day of occurrence the appellant called his father to the road by saying that he would pay the money which was due to be paid to his father. On that moment he along with his younger brother Jatin followed their father. The appellant hacked in the neck of his father with a dao near his house and ran towards his house. He also stated that the accused pushed his younger brother. His younger brother fell into the water and when his father went to rescue him, the accused dealt a dao blow to his father and left the place of occurrence. Both of them went to the house and narrated the incident to their mother that their father was cut. On cross-examination, this witness testified the statement made in the examination-in-chief by stating that when his father went out at the call of the appellant he and his younger brother followed their father. His father and brother Jatin walked side by side while at that time he was about a

distance of 100 fts behind them. He deposed that he saw the appellant cutting his father from a distance of 100 fts. At that time his younger brother Jatin was with his father when his father was cut, first he went near him. Jatin was crying at that time. He denied the suggestion that the appellant did not kill his father by cutting neck with a 'Khukri'.

13. At the same breath, P.W.-5, Jatindra Deka, aged about 12 years and the other younger son of the deceased, narrated the incident saying that the appellant cut the neck of his father with a 'khukri-dao' and the neck was almost severed. At that time, his elder brother Mantu Deka was also with him. Both Mantu and he were with their father. Although in his examination in chief at the very outset he stated that he did not see the occurrence with his own eyes, immediately, thereafter, he deposed that when he was going with his father, the appellant pushed him to a ditch and when his father came to his rescue, the accused cut his father at the neck and ran away from the place. He also reiterated the same version in his cross-examination.

14. P.W.-7, Sri Tarun Nath, an independent witness testified that on the day of occurrence he was informed by P. Ws. 3 and 5 that the appellant cut their father who was called by the appellant to the road by saying that he would repay the money due to their father. He also deposed that both P.Ws 3 and 5 told him that the appellant pushed and fell Jatin into a ditch and when the deceased went to help Jatin in his rescue, the appellant cut his neck.

15. P.W.4, Dr. Nirmal Ch. Sharma who conducted the postmortem on the dead body of the deceased found the following injury on the person of the deceased--

One deep incised wound present in the left side of the neck 8 cm x 5 c.m. depth-deep inside the neck involving the muscles of the left side of the neck and also involving the arteries and veins of the left side of the neck. The injuries are anti-mortem.

16. Doctor, P.W.-4 in his evidence, opined that the death was due to shock and haemorrhage as a result of the injury sustained.

17. On proper and close appreciation of the testimony of the evidence so recorded herein above and also upon hearing the learned Counsel for the parties, it is seen that the deposition of P.Ws. 3 and 5, although being child witness is trustworthy and reliable having full corroboration as regards the incident where their father was killed by the appellant in their presence at the place of occurrence. The evidence of both the eye witnesses was wholly corroborated by the independent witness P.W. 7. P.W. 2, wife of the deceased and the mother of P.Ws 3 and 5 was also categorical in her statement that it was the appellant who called away her husband and at that moment both her two sons accompanied their father and immediately thereafter both of them came crying and informed that their father was cut by 'khukri' by the appellant. From the testimony of the above witnesses, it is manifestly clear that the appellant gave the fatal blow by 'khukri' to the deceased which was Exhibited as Exhibit 4. The injury of such nature also corroborated by the medical evidence of Doctor P.W.-4 who clearly found in his postmortem report that there was one deep incised injury in, the neck and in his opinion the death was caused due to such injury.

18. Considering the deposition of the witnesses so mentioned above and also having regard to the facts and circumstances of the case in its entirety we are of the considered opinion that it was the appellant who caused the death of the deceased intentionally by assaulting him in the neck with a 'khukri'.

19. Be it mentioned herein that the evidence of P.Ws. 3 and 5 cannot be ignored as argued by the learned Amicus Curiae merely because they were child witnesses. It is settled that the evidence of child witness can be the basis of conviction, if the said is found to be reliable, corroborative and trustworthy. In the instant case, we are of the considered opinion that both the witnesses P.Ws. 3 and 5, admittedly being the child witnesses are credible witnesses and their evidence as regard the killing of their father by the appellant and that too in their presence cannot be brushed aside. Besides, their evidence also got corroborated with the testimony of P.W.-2 and P.W. 7. That being so, we do not find any discrepancy and/or infirmity in their evidence so as to brush aside the same as child witness and to impeach the prosecution case accordingly.

20. In view of the above, we are in full agreement of the views and findings arrived at by the learned trial Court. Accordingly, the conviction and sentence under Section 302 IPC are hereby upheld and affirmed.

21. In the result, the appeal fails and stands dismissed.

22. Before parting with the case record, we would like to put on record the appreciation to Mr. Noor Mahammad, learned appointed Amicus Curiae for his help and assistance rendered to arrive at a decision in this jail appeal and accordingly, it is ordered that he is entitled to get his professional fee of Rs. 2500/- . L.C.R. be sent down immediately.

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