

Gopal Saikia Vs. State of Assam

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Court : Guwahati

Decided On : Jul-25-2003

Judge : S.K. Kar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304; [Probation of Offenders Act, 1958](#) - Sections 4

Appeal No. : Criminal Appeal No. 61 of 2002

Appellant : Gopal Saikia

Respondent : State of Assam

Advocate for Def. : None

Advocate for Pet/Ap. : A. Thakur, M. Sarma and S. Sarma, Advs.

Judgement :

S.K. Kar, J.

1. This appeal is presented by the appellant, Shri Gopal Saikia, who was convicted by Sessions Judge, Sivasagar, in connection with Sessions case No. 3(S-S)/99 under Section 3-4 Part-I, IPC and sentenced to 7(seven) years rigorous imprisonment along with a fine of Rs. 1,000, vide order dated 19.12.2001.

2. Brief facts of the case are as follows :

On 14.11.1998 at about 8 a.m. consequent to a quarrel about the possession/ownership of a jack - fruit tree between the father of the deceased and the deceased, there were altercations and the appellant dealt blows with sharp weapon which turned to be fatal causing death of Babul Saikia.

3. The accused Gopal Saikia and deceased Babul Saikia are brothers and sons of Bap Saikia. It is stated that the deceased Babul Saikia because of his behavioural pattern separated from the family and was living separately with his wife before the date of the incident.

4. FIR was lodged by Smti Tutu Saikia, wife of deceased Babul Saikia on 14.11.1998 at 11.30 a.m. and upon her FIR a case was registered under Section 302 IPC and after investigation Police officials submitted charge-sheet. Trial began against the appellant framing charge under Section 302 IPC wherein accused appellant pleaded not guilty to charge that was framed against him.

5. The defence plea is that Babul Saikia died due to assault on his head and Gopal Saikia was not responsible for causing death.

6. Point for determination before the learned trial Court was whether the appellant was guilty of murder of his own brother Babul Saikia as alleged in the prosecution version of the case.

7. In order to substantiate the allegations and the charge, prosecuting examined altogether six witnesses including the I.O. and the doctor. In his defence the appellant examined himself as D.W.-1. Arjun Baruah (P.W.-1) is the Gaon Burah of the village concerned. Toseshwar Sakia alias Guna (P.W.-2) is the brother of the deceased and the appellant Bijoy Sakia (P.W.-3) is the co-villagers and Mrs. Tutu Saikia (P.W.-4), aged 20 years, is the wife of the deceased. Dr. Abdul Sattar (P.W.-5) and Sri Gopal Bora (P.W.-6) are doctor and investigating police officer respectively.

8. Learned trial Court opined that circumstantial evidence adduced in this case, when read with oral testimony of P.W.-4 clearly establishes the accusation against the appellant. Though none of the witnesses specifically named the appellant as

the very person inflicting the fatal strokes, the circumstance established by them will clearly pinpoint the appellant as the perpetrator of the crime. The informant has stated that on 14.11.1998 at about 8/8.30 a.m. she, along with her son, was present in the house and hearing alarm/cries from the jungle nearby to their house she came out and met the appellant/accused at a 'chariali' (road junction). The appellant told her that he had cut Babul inside the jungle with 'khukari' (dagger) and also showed her the said 'khukari' with which he assaulted her husband. Her further statement is that the witness Bijay Saikia was along with her on that particular point of time and both of them thereafter proceeded towards the jungle and found her husband lying on the ground with bleeding injuries but was already dead and people had assembled there. Further statement of P.W.-4 is that there was a dispute regarding a jack-fruit tree which was standing at the boundary of her compound. That two days before the date of occurrence her husband objected to the cutting of the tree and 'Gaon Burah' was informed by the deceased about the incident of cutting of the tree. She stated that the incident was the ultimate result of the dispute. That she and her husband were not liked by other members of the family due to that dispute. She proved filing of the FIR Exht. 3, along with her signature thereupon. During her cross-examination she stated that when she was inside the Police Station the appellant made a confession before them declaring that he hacked the deceased with the 'khukari' although it was not written in the F.I.R. So practically speaking there is no in firmity in her evidence and the extra judicial confession made by the appellant before her has remained unrebutted. P.W.-3, Bijoy Saikia, the next witness mentioned by P.W.-4, in his deposition corroborated the P.W.-4 on material points. Equality, there is nothing in his cross-examination to discredit P.W.-3, P.W.-2 is a brother of the deceased and he stated that he used to live and still is living with the appellant and his parents in the same mess. But his brother Babul Saikia (deceased) was staying separately from them and died 8 (eight) months ago when he was present in the house. P.W.-2 is a personnel of the 3rd Task Force. His evidence is that on the date of occurrence the deceased raised objection regarding a jack-fruit tree standing on the land belonging to his father and the deceased claimed it to be in his own share. The tree was earlier felled by his father engaging labourers and next before the time of (unfortunate) incident he, his father, appellant and the deceased were present

near the tree. There was an altercation and the deceased left the place while he and the appellant stayed back near the tree. Then he heard cries of Babul Saikia and went near him and found him lying with bleeding injuries. He tied the wound with a gamucha (towel) and brought him to the Joysagar Hospital but Babul succumbed to his injuries. During cross-examination he has stated that the dwelling house of the deceased was far away from their home and the deceased was stubborn and quarrelsome person. He always used to disobey his father for which he was separated. That he was once caught in a theft case and his father pointed out to his house when police came for which the deceased bore a grudge against his father. P.W.-1 simply stated that he was nearby the place of occurrence and noticed that the deceased and the appellant were having a quarrel but he did not see what happened later on. Therefore, although not specifically named by any of the witnesses examined, a cautious and careful reading of the testimonies of the witnesses would make it clear that next before the time of assault on the victim the appellant and his brother were around the place of occurrence which is a jungle generally not frequented by any other person and this circumstances was discussed by the Court below in its judgment.

9. The evidence of the I.O. in this case is very important because it is the undisputed fact that the appellant soon after the incident of assault of his brother (deceased) appeared in person before the Gaurisagar Police Station and surrendered before the Police at about 11.40 a.m. along with a 'khukari' with a disclosure statement that he had killed his brother Babul Saikia. P.W.-6, the I.O. thereafter seized the 'khukari' in presence of Arjun Baruah (P.W.-1). He proved the seizure list Exht.1 along with his signature thereon. The 'khukari' seized was also produced before the Court as material Exht.1. The I.O. states that he recorded the statements of Tutu Saikia, Arjun Barua, Bap Saikia and Tukheswar Saikia at the Police Station. All these persons are witnesses in this case. Exht.1, the seizure list, has clearly mentioned that one 'khukari' about 1 1/2 ft. with the wooden handle about 5 inches with blood stain on the blade was seized in presence of witness Arjun Baruah (Gaonburah), Bap Saikia and Tosheswar Saikia. There is nothing to disbelieve this seizure and accordingly the piece of evidence is admissible under Section 8 of the Evidence Act to show 'motive, preparation and previous was the subsequent conduct' of the accused. Read with this seizure the evidence of P.W.-

4, i.e. Smti Tutu Saikia (wife of the deceased) draws a strong inference to implicate the appellant to be the author of the crime. The appellant had no explanation to answer his conduct otherwise when during his deposition as D.W.-1 he made the following statements on oath:

'On the date of occurrence at about- 9 O'Clock in the morning I was standing near the jack-fruit tree along with my father and brother Tosheswar Saikia. My father told me that some time earlier the deceased Babul Saikia had come there and scolded him for cutting the tree. Soon thereafter, the deceased again appeared at the scene and again abused us and left towards bushes. After about 10 minutes we heard a cry from towards the tree bushes (jungle) shouting 'dying' dying'. Then myself and my brother Tosheswar Saikia went running towards the place and found that Babul was lying on the ground with injuries and a dao was also lying nearby. Then I returned home and reported to my father that Babul had been assaulted by someone.'

10. In this case, however, nothing was seized from place of occurrence. There is no circumstances to show that any other person at the relevant time had access to the place of occurrence which is a jungle spreading over more than 1 1/2 kms. During his statement under Section 313 of the Cr.P.C. the appellant made somewhat a different statement which is not corroborative with the deposition he had given as D.W.-1 and the statement so made goes as follows :

'On the relevant day I went to take tuition under my teacher Shri Bipin Dutta at 6 p.m. I returned home at 7.30 a.m. Thereafter, I went to our backyard with my brother Tukheswar Saikia to collect firewood. Going there I saw that my elder brother Babul was lying injured. I reported it to my father and thereafter, both myself and my father came to the police station with the intention to lodge an F.I.R. that someone had committed murder of my brother.'

11. This clearly demonstrates infirm and vacillating defence plea/stand. Without lengthening the reasoning further I find that in this case there are hardly disputed facts and the statements made by the witnesses, who are closely related to the appellant, before the police have not been denied in course of hearing of the case.

12. An objection has been raised by the learned counsel appearing for the appellant that in the instant case the I.O. himself made the seizure of the incriminating articles, received the FIR conducted the investigation and submitted C.S. which is not permissible and he referred to a decision of the Hon'ble Apex Court in Megha Singh v. State of Haryana, AIR 1995 SC 2339 where it was held that Head Constable, arresting accused and recovered a pistol and cartridges from him and formal FIR lodged on his complaint, should not have proceeded with investigation of the case. The fact of this case are some how different as here FIR was lodged by the wife of the victim and the I.O. started investigation and thereafter finding the witnesses present before him and incriminating materials being produced before him, went officially to make the seizure and examine the witnesses. In my view there is nothing wrong in doing so, P.W.-6 has not been imputed as a interested person or acting in prejudice to the appellant.

13. Concluding, therefore, I find there is hardly anything to assail the judgment and the finding of the learned Sessions Judge. The substantial evidence adduced in this case, as discussed by the Court below, has remained unshaken and trustworthy.

14. Coming to the question of sentence next, however, if find that there is scope for this Court to interfere. The appellant has given his age 19 years in December, 2001 while deposing as D.W.-1 and the incident took place on 14.11.1998, i.e., three years back when his age would have been around 16 years. It is very unfortunate that he has lost his brother and he might have been very repentant for that. It was the age of emotion and there was every possibility of his becoming agitated seeing any insult or dis-obedience to his father. In a case of murder or culpable homicide or offence of such serious nature the relief under 'The [Probation of Offenders Act, 1958](#) is generally not extended. Section 4 of the Probation of Offenders act, 1958 clearly provides no probation can be allowed in case where offence proved is punishable with death or imprisonment for life etc.

15. In the instant case the offence of conviction is under Section 304 Pt-I which is punishable with imprisonment for life or imprisonment for 10 years and fine.

16. In my opinion, ends of justice will be met if a lenient sentence is passed. The family of the appellant along with the appellant is already a loser by loss of one of the member being hacked to death by another member of the family. Therefore, sending the appellant for a longer period in Jail is hardly going to benefit either the aggrieved or the society. Sentence passed on the appellant is accordingly reduced to an imprisonment of 3 years together with fine imposed by the trial Court. The trial court will calculate out the period spent in Jail hajat during the investigation and enquiry for the purpose of set off as contemplated under Section 428 Cr.P.C. and send a copy of the same along with warrant of commitment to the Jailor.

17. In the result, appeal against conviction is dismissed but in so far sentence is concerned it is partially allowed as indicated above.

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