

Puheswar Boro Vs. State of Assam

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Court : Guwahati

Decided On : Jun-04-2008

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

Appellant : Puheswar Boro

Respondent : State of Assam

Judgement :

Hrishikesh Roy, J.

1. Heard Ms. U. Buzarbaruah, learned Counsel appointed as Amicus Curiae in place of the earlier appointed counsel Mr. S.C. Koyal who was absent when the case was called up yesterday although the case paper book was furnished to him much earlier. Also heard Mr. Z. Kamar, learned Public Prosecutor, Assam.

2. This appeal is presented against the judgment and order dated 29.04.02 passed by the learned Sessions Judge, Morigaon in Sessions Case No. 15/2001, whereby the appellant has been convicted under Section 302 IPC and has been sentenced to undergo Rigorous Imprisonment for life. The appellant has also been ordered to pay a fine of Rs. 2000/-, in default, to suffer rigorous imprisonment for another three months, by the impugned judgment.

3. The prosecution case indicates that one Sri Haren Saikia (PW. 2) lodged an Ejahar with the Jagiroad P.S. on 13.04.99 stating that on that day at about 10 A.M.

the accused Puheswar Boro took away his 17 years old daughter Pranati Saikia (deceased) and on the way at Hatiamukh village, the accused badly tortured his daughter and killed her and after killing her left the dead body in the house compound of one Karna Bora of the same village and thereafter the accused fled away. But some village people apprehended the accused. Accordingly the informant by lodging the FIR requested for police investigation.

4. During the trial as many as eight witnesses were produced on behalf of the prosecution whereas none on behalf of the defence was presented. Following charge, the accused pleaded not guilty.

5. Kama Bora (PW. 1), in whose house compound the victim girl was left by the accused, states in his evidence that when he returned home from the paddy field, he saw Pranati Saikia lying in the verandah of his house. His wife who was present in the house informed him that a boy left her and went away by saying that he was going to call a doctor. That boy was thereafter caught on the way. In his cross-examination PW.-1 stated that village defence party apprehended the accused about a mile away from his house.

6. Shri Haren Saikia (PW-2) was the informant and is the father of the victim girl Pranati Saikia. He states in his evidence that Pranati had eloped with the accused about 3/4 years ago and at that time she was 13 years old and was a student of Class-VII. Thereafter Pranati came back to her parent's house and it is deposed by PW-2 that she showed injury marks on her back and on her body and stated that the accused and his elder brother used to assault her and that she was also ill-treated in the accused house. PW-2 noticed the injury marks on the back of the victim girl. After spending two months in her parental home, the accused once again came and took away Pranati and after killing her, the accused left her body at Kama's (PW-1) house. PW-2 states that on being informed he went to Kama's house on a bicycle where he found his daughter dead and many people gathered there. He also found the accused tied up by the public. Then he lodged the FIR.

7. Smti. Champa Bora (PW-3) states that she knew the victim girl Pranati. She states that at about 10/11 A.M., the accused left Pranati lying in her house and the victim was unable to speak anything and was in an unconscious state. The victim

was writhing around with pain. The accused went away by saying that he was going to call a doctor but he did not return. When her husband (PW-1) returned home, PW-2 told him about the occurrence and later on the accused was apprehended and was kept tied in the cowshed of the PW-3's house.

In her cross-examination PW-3 stated that accused carried the girl in his arms and kept her at her house. He also asked water for her and tried to make the victim drink water.

8. Smti. Manomati Saikia (PW-4) is the mother of the victim girl who corroborates the evidence of PW-2 by stating that the accused had taken away his daughter about two years back and kept her in Shillong. After about a year the accused and the daughter came back to her parental home and spent about fifteen days at parent's house (PW-2 and PW-4). PW-4 also stated that the accused and his brother used to assault the victim. She further deposes that the victim died on the same day when she was taken away by the accused from her parent's house. She further states that the victim did not suffer from any disease. She further states that the house of P W-1, where the victim girl was left by the accused, is at a distance of half a mile from the parental house of the victim girl.

9. Smti. Bhanu Saikia (PW-6) states that the accused on the day of incident, while being accompanied with a girl, asked for water at her house. She further states that she later heard that the girl who was with the accused died at Kama Bora's (PW-1) house.

10. The post mortem on the victim girl was conducted by one Dr. K. Bora and PW-7 Dr. Banamali Nath was present during the post mortem. PW-7 notices the following injuries on the victim girl.

(1) Bruise over the left wrist 2' x 2'

(2) Bruise over the right leg 2' x 1'

(3) Old scar over the front of the chest from neck to rest of the chest.

11. Shri Amulya Deka (PW-8) is the I.O. of the case who stated that on 13.04.99 after receiving the FIR in the Police Station, he was asked to investigate the case and on reaching the place of occurrence, he found that the deceased was lying in the verandah of PW-1 's house. He also stated that the public had apprehended the accused and had handed him over to the police.

12. Ms. U. Buzarbaruah, learned Amicus Curiae submits that the entire prosecution case is based on circumstantial evidence and there is no direct evidence of any eyewitness implicating the accused with the crime. The learned Counsel further submits that the medical opinion of PW-7 clearly indicates that the injuries noticed on the body of the victim girl are not sufficient for causing death and accordingly the learned Counsel submits the conviction of the accused under Section 302 of IPC is not justified.

13. Justifying the conviction and sentence, Mr. Z. Kamar, learned PP, on the other hand, submits that although the prosecution case is based on circumstantial evidence, the evidences clearly pointing to the guilt of the accused, the circumstantial evidence can definitely be made the basis for conviction of the accused under Section 302 IPC. The learned Counsel submits that since after the accused had taken away the victim girl from her parent's house, the victim and the accused were all the time together and eventually the victim was left in an injured state in the residence of PW-1, which is located about half a mile from the victim's parent's house and eventually the victim died while lying down in an injured state in the verandah of the house of PW-1.

The learned PP submits that there are past history of violence by the accused on the victim girl when they lived as husband and wife at Shillong which is apparent from the evidence given by the PW-2 and PW-3 and even on the day of incident injuries were inflicted on the victim girl by the accused, as injury marks are noticed on the body of the victim. Under such circumstances, on the basis of the principle of last seen together, it is improbable that anybody other than the accused could have had a hand in causing the death of the victim Pranati.

14. The learned PP has relied upon the decision reported in : [1992]2SCR921 Madan Gopal Kakkar v. N. Dubey and submits that merely because the PW-7

opined that the injuries noticed on the victim girl are not sufficient to cause death, that by itself cannot be accepted as a reason for ordering acquittal of the accused.

The learned PP has also relied upon the Supreme Court decision reported in 2006 Criminal Law Journal 303 (Vishnu v. State of Maharashtra) where the Supreme Court by following Madan Gopal's case (supra) has held that the evidence given by the Medical Officer is really of an advisory character and not binding on the witnesses of fact.

The learned Counsel by relying upon Madan Gopal (supra) submits that the doctor is not a witness of fact and the evidence given by the medical officer is really advisory in character provided on the basis of examination made by him and Court although not an expert, may form its own opinion on facts by having due regard to the opinion of the medical expert.

15. The learned PP has also referred to a decision of this Court dated 03.01.08 in Criminal Appeal No. 171/07 reported in 2008 (1) GLT 762 (BUM Hussain and Anr. v. State of Assam). This decision was rendered by the Court explaining the scope and ambit of the 'last seen together' principle, while considering a case based on circumstantial evidence. In Billal Hussain (supra) this Court has stressed on the time gap, for conviction.

In the facts of this case the 'last seen together' principle is clearly applicable since the time of travel together by the victim and the accused from the parental house to the house of PW-1 are so small and also the distance between the two houses are so less that it is unlikely that anyone other than the accused could have inflicted the injuries noticed on the victim. Accordingly, it is contended that in the absence of possibility of any other person other than the accused inflicting the injuries, the guilt of the accused appellant is clearly established on the basis of 'last seen together' as the victim died soon after suffering those injuries.

16. In the instant case the vital evidence is that the victim was taken away from her parental home by the accused on the day of incident. At the time when she left her parental home she was a healthy person. Soon thereafter within a short time and at a short distance, the appellant and the victim had reached the house of

PW-6 where the accused asked for some water. Thereafter the accused and the victim reached the house of PW-1 at a distance of 1/2 km. from the house of victim's parents and the victim girl in an injured condition was carried in his arms by the accused and she was kept in the verandah of the house of PW-1. The accused asked for some water from PW-3 and tried to make the injured girl drink some water. Thereafter the accused by stating that he was going to call a doctor, left the injured girl in the verandah of PW-1 's house where she soon died. Soon thereafter the accused too was apprehended by the village defence party a little distance away from PW-1 's house.

17. From the above narration of facts, it is clear that an unbroken chain emerges right from the time of the victim and the accused together leaving the parental home of the victim and the victim suffering some injuries while travelling with the accused and the accused leaving the victim in an injured state in the residence of PW-1, and just prior to that the victim and the accused being seen in the house of PW-6 where they asked for water. All these facts clearly indicates that right till that moment, all the time since leaving her parental home, the victim was in the company of accused and none but the accused could have inflicted the injuries on the victim as the evidence clearly pointed out that the victim suffered injuries during the said period. Although none have actually seen the accused assaulting the victim, the only inference that can be drawn by the Court is that none but the accused could have inflicted injuries on the person of the victim on the day of the incident.

18. Now if we consider the medical opinion, it is found that the injuries seen on the victim are not sufficient to cause death and it suggests that there may not have been an intention to cause death of the victim by the injuries inflicted on her.

19. Under such circumstances, although culpability of the accused with the death of the victim girl Pranati is clearly established, there is a lingering doubt in the mind of the Court as to whether the accused actually had the intention to kill her.

20. The learned Amicus Curiae has referred to the Supreme Court decision reported in : 2000 CriLJ4663 (State of U.P. v. Indrajeet) to submit that absence of intention to cause death coupled with the lack of knowledge that death would be

inevitably caused on account of the injury would make the offence fall under Section 304(II) of IPC and not under Section 302 IPC. Accordingly, it is contended that the conviction of the accused under Section 302 may not, perhaps, be justified and it would be more appropriate for the Court to take a view that the case is one where the conviction be altered from one under Section 302 to one under 304 (II) IPC.

21. Having scanned the evidence on record and after having considered the submissions made by the learned Counsels representing the parties, we are of the view that none but the accused appellant could have inflicted the injuries on the victim girl. Although the medical opinion suggests that the injuries suffered by the victim girl may not in normal course, could result in death, that by itself, cannot persuade us to take a view that the accused did not have a hand in the death of the victim girl. Since they were last seen together and since during the period when they were together the victim suffered certain injuries and since the victim succumbed to the injuries suffered by her during the time she remained together with the accused appellant, we are of the opinion that it must be the accused appellant who inflicted those injuries on the victim and it is through those injuries, the death of the victim has occurred.

22. However, it is also found that the accused appellant tried to nurse the victim by offering her some water. It is also doubtful as to whether the accused really had any intention to kill the victim by his assault. If he intended death, then more serious injuries could have been inflicted and noticed on the victim. Therefore, in our opinion it might be appropriate to accept the submissions made by Ms. U. Buzarbaruah, Amicus Curiae that there may not have been any intention of the accused to kill the girl.

23. Under the above circumstances, we are of the opinion that the interest of justice would be met by interfering with the conviction of the accused under Section 302 IPC by converting the same to one under Section 304(II) IPC. Consequently, the sentence of life imprisonment passed by the Trial Court is also interfered with and the same is converted to one of ten years rigorous imprisonment. The appeal accordingly stands partly allowed. Send down the LCR

records forthwith. Before parting with the records, we wish to place on record our appreciation for the assistance rendered by the learned Amicus Curiae to this Court in deciding this case. Accordingly, Ms. U. Buzarbaruah, learned Amicus Curiae be paid her professional fees which is quantified at Rs. 5000/-

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