

Basiruddin Vs. State of Assam

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Court : Guwahati

Decided On : May-03-2007

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

Appellant : Basiruddin

Respondent : State of Assam

Disposition : Appeal allowed

Judgement :

A.H. Saikia, J.

1. Heard Mr. K.K. Gupta, learned Amicus Curiae. Also heard Mr. B.B. Gogoi, learned P.P., Assam.

2. This criminal appeal from jail is directed against the judgment and order dt. 29.9.01 rendered by the Sessions Judge, Karimganj in Sessions Case No. 64/98 whereby the appellant was found to be guilty of killing one Amzad Ali and accordingly he was convicted under Section 302 IPC and sentenced accordingly to undergo rigorous imprisonment for life with a fine of Rs. 1000/-, in default, 2 months simple imprisonment.

3. The prosecution case, in short, may be noticed. On 28.11.97, one Khudeja Bibi, PW-3, lodged an ejahar with Ratabari Police Station alleging that some 4/5 days

ago her husband Amzad Ali went to Karimganj Motor Workshop for getting a truck repaired. Finding no information about him, on 28.11.97 she sent her son Sirajuddin, P.W. 1 to enquire about her husband. Her son on the same day afternoon returned from Karimganj and informed her that his father would return at night. However, on 29.11.97 she came to know from some persons that on previous day when her husband visited his father-in-law's house, Basiruddin, the appellant, at Ratabari village on his way back home, the appellant assaulted her husband to death and thereafter the said Basiruddin surrendered himself in the police station.

4. On the basis of the above information, the police started investigation and after examination of various persons as witnesses and also having held inquest, Ext.-4, submitted charge sheet against the appellant under Section 302 IPC.

5. Before the trial Court, i.e. the learned Sessions Judge, Karimganj, to whom the case being exclusively triable by the Sessions Judge was committed by the learned Chief Judicial Magistrate, Karimganj, the prosecution examined as many as six witnesses including the Doctor, Dr. Lipi Dev, PW-4 and the Investigating Officer (I.O.) Rahim Uddin Choudhury PW-6 and also produced various documents as Exhibits, namely, Post Mortem Report (Ext.-1), F.I.R. (Ext. 2), Seizure List (Ext.-3) and Inquest Report (Ext.-4). On the other hand, the defence examined two witnesses and pleaded not guilty.

6. After appreciation of the material evidence on record, both oral and documentary and after hearing the learned Counsel for the parties, the learned Sessions Judge by the impugned judgment and order convicted and sentenced the appellant as already indicated above.

7. Admittedly, there was no eyewitnesses in this case and the entire conviction was based on circumstantial evidence.

8. Challenging the impugned conviction and sentence Mr. Gupta, learned Amicus Curiae has argued that no circumstantial evidence could be proved by the prosecution to implicate the appellant in the commission of offence so as to convict him under Section 302 IPC. Referring to the witnesses particularly, Siraj

Uddin (PW-1) and Khudeja Bibi (PW-3) as well as the FIR (Ext-2), it is forcefully contended that in the backdrop of the contentions made in the F.I.R., the evidence of PW-1 and PW-3 cannot be said to be convincing one and trustworthy, so as to make out the case for conviction on circumstantial evidence. On that count alone, the impugned conviction and sentence are liable to be set aside.

9. The learned P.P., Mr. Gogoi, in support of the impugned conviction and sentence, has strenuously urged that the medical evidence of P.W. 4, the Doctor would manifestly show that the appellant inflicted on the person of late Amzad Ali multiple injuries and the appellant's involvement in the commission of the offence was satisfactorily established on the basis of circumstantial evidence from which the inference of guilt could be easily drawn beyond reasonable doubt against the appellant.

10. We have given our thoughtful consideration to the arguments advanced on behalf of the appellant and the prosecution. We have also meticulously examined and appreciated the testimony of the witnesses examined by the parties.

11. It appears that in the FIR, (Ext.-2) PW-3, the informant, clearly stated that for not getting any information about her husband's whereabouts for last 4/5 days, on 28.11.97 she sent her son (PW-1) to enquire about her husband. But in the evening of the same day her son informed her on returning back from Karimganj that her husband would return at night. However, on the next day at noon i.e. on 29.11.97 she came to know that her husband was assaulted by the appellant to death and the appellant surrendered himself before the police. On the other hand, PW-1 in his evidence, narrated a different story. He categorically deposed that while he was accompanying his father on their way back home from Karimganj after reaching Anipur village his father told him to go home as he would go to bring his step mother Karimun Nessa from the appellant's house, who at the relevant time was residing at the residence of the father, the appellant. On the following day i.e. on Saturday one Pakhar Ali of Dalgram came to his sister Rehan Bibi's house in their village and informed her to have been told by the O.C., Ratabari Police Station that the appellant murdered his father Amzad. When he came to the police station of Ratabari, Rehan Bibi narrated him the whole incident. On getting

that news he along with Khudeja Bibi, PW-3 his step-mother reached Ratabari police station where they saw the dead body of his father.

12. Coming to the evidence of P.W. 3, it is seen that she testified to the effect that her husband on return home from Karimganj visited the house of his father-in-law, the named accused/appellant at village Bartuk. At that time her son, Sirajuddin, P.W. 1 accompanied her husband. Her husband returned home and reported her that her husband was staying in the residence of the appellant who was his father-in-law, through his another wife Karimunnessa. At that time his second wife Karimunnessa was staying in the house of the appellant. On the following day, according to her, the police of Ratabari Police Station informed her that the dead body of her husband was kept in the police station and told her that he was murdered by the appellant. Immediately she rushed to the police station and found the dead body of her husband with bleeding injury and the appellant was kept in the police station. Thereafter she lodged the FIR.

13. A conjoint reading of the statements made in the FIR and deposition of PW-1, PW-2 would apparently indicate that the deposition of those witnesses was loaded with full of contradictions and inconsistencies and totally lacked corroboration at all material particulars. The fact as narrated in the FIR lodged by P.W. 3 to the effect that it was she who sent her son, P.W.-1 to get the information of where about of his father, the deceased, was wholly substituted by a different story by her in her deposition as P.W. 3 wherein as already noticed above she mentioned that her son accompanied his father on his return home, reported her that her husband was staying in the residence of the appellant where his another wife was staying. On cross, this witness i.e. P.W. 3 told that she did not state before the police nor in the ejahar that her husband accompanied her son to the house of the appellant. She made it clear in her cross-examination that there was no dispute between her husband and Karimunnessa. She also reinforced that there was a good relation between her and Karimunnessa.

14. From the deposition of P.W.-1 and P.W. 3, according to us contradictions in their deposition were writ large and such evidence cannot be accepted and relied upon for conviction of the appellant based on circumstantial evidence.

15. Moreso, the version expressed in the FIR lodged by P.W. 3 was totally negated by the deposition of P.W.-1. In the FIR, it transpires, she alleged that she came to know from some persons that on 28.11.97 when her husband visited his father-in-law's, appellant's house. On his way back home, he was assaulted by the appellant to death and the appellant surrendered in the police station. But in her examination she projected that it was the police of Ratabari Police Station who informed her that her husband's dead body was kept in the police station and her husband was killed by the appellant.

16. On the other hand, P.W.-6, the I.O. did never state that the police informed the P.W. 3 about the death of her husband and he was killed by the appellant as claimed by P.W.3 in her deposition. According to the evidence of I.O. it is found that on 29.11.1997 the P.W. 3 lodged a written ejahar with the Ratabari Police Station to the effect that her husband late Amzad AH was murdered by the appellant and the appellant surrendered to the police station. After the accused was being detained in the police station, he rushed to the house of the appellant for investigation. At the same breath he deposed that having been deputed by the Officer-In-Charge of the Police Station, the I.O. preceded to the place of occurrence accompanied with the appellant where he seized one wooden hamma and axe pointed out by the appellant as used for commission of murder. In the following morning, according to this witness, he found the dead body of deceased Amzad Ali in the house of the appellant and Ext. 4 was the inquest report and his signature was exhibited as Ext. 4(1). Thereafter he dispatched the dead body to the Karimganj Civil Hospital for post mortem. He, on cross, specifically stated that he interrogated the village persons namely Joytunnessa, Karimunnessa, Surchand Singh and Nur Chandra Singh. But surprisingly those witnesses, being vital witnesses, as claimed by the learned Amicus Curiae, were not at all examined as witnesses in the trial. It appears to us that non-examination of those witnesses particularly Joytunnessa cast doubt in the prosecution story so set out against the appellant on the basis of circumstantial evidence.

17. Admittedly multiple injuries were found on the dead body of deceased and as per doctor's evidence, P.W.-4 the following injuries were found;

(1) Cut injury about 3' x 2' x 1' through left ear. pinna lobule. (2) Cut injury left parietal region 1 x 1 x bone cut (3) Deep cut injury horizontally over forehead about 5' x 2' x brain matter exposed. (4) One punctured wound over right mastoid about 1' x 1' x 3' oval shape. (5) Transverse cut injury over pinna 3' x 2' x 1' (6) Penetrating wound over right nipple 1' x 1' x 1' oval shape (7) Penetrating injury over left elbow joint about 1' x 1' x 2' oval shape.

18. Be that as it may, on discreet analysis of the deposition of those witnesses particularly PW-1, P.W.-3 and P.W.-6, we feel that the conviction and sentence of the appellant based on circumstantial evidence cannot be sustained.

19. It is established principle of law that in cases where evidence is purely circumstantial in nature, the facts and circumstances from which the conclusion of guilt is sought to be drawn, must be fully established beyond any reasonable doubt and such circumstances must be consistent and must unerringly point to the guilt of the accused and the chain of circumstances must be established by the prosecution. (See : 2003 CriLJ3731 Golakonda Venkateswara Rao v. State of A.P.). Each and every piece of incriminating circumstances must be clearly established by reliable and clinching evidence and circumstances so proved must form such a chain of events as would permit no conclusion other than the one of guilt of the accused and such circumstances cannot be explained on any hypothesis other than the guilt of the accused to convict the accused on circumstantial evidence. The Court has, therefore, to be cautious and avoid risk of allowing mere suspicion, however strong, to take place of proof.

20. In the instant case, we do not find the deposition of witnesses basically P.W.-1 and P.W. 3 so much reliable, trustworthy and convincing so as to complete the chain of circumstances that needs to be established by the prosecution. It is, therefore, held that the prosecution appeared to have failed to prove the guilt of the appellant through the circumstantial evidence beyond reasonable doubt.

21. Consequently the impugned conviction and sentence are hereby set aside and quashed.

22. We direct the appellant be released forthwith if he is not otherwise connected in any other case.

23. In the result, this appeal succeeds and stands allowed.

LCR be send down immediately.

24. Before parting with the case record, we would like to put on record our appreciation to Mr. K.K. Gupta, learned Amicus Curiae for rendering his valuable assistance and help in arriving at the aforesaid decision and accordingly we order that he is entitled to get his professional fees which is quantified at Rs. 2500/-.

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