

Milan Baidya Vs. the State of Assam.

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Court : Guwahati

Decided On : Feb-15-2011

Appeal No. : CASE NO CRL.A(J) 112 OF 2004

Appellant : Milan BaidyA.

Judgement :

Court Of Assam,Nagaland,Meghalaya,Manipur,Tripura,Mizoram and Arunachal Pradesh

CASE NO CRL.A(J) 112 OF 2004

District Karimganj

1 MILAN BAIDYA

Petitioner

Versus

1.THE STATE OF ASSAM

Respondent

!1 MR.C BHATTACHARYYA

2.AMICUS CURIE

Petitioner's Advocates

^1.PP, ASSAM

Respondent's Advocate

Coram:

BEFORE

HON'BLE THE CHIEF JUSTICE MR.MADAN B.LOKUR

HON'BLE MR.JUSTICE H.BARUAH

DATE OF ORDER:15/02/2011

In challenge is the Judgment and Order of conviction and sentence dated 17.07.2004 passed by the Sessions Judge, Karimganj in

2.Being convicted as indicated above, the appellant has preferred this instant appeal from jail challenging legality and corr .The brief facts are as follows :

Informant Smt.Champa Rani Baidya (PW6) is the sister of the appellant, Shri Milon Baidya while deceased Bithi Rani Baidya was

3.The case was committed to the court of Session.The appellant stood charged under sections 449/302 IPC.Prosecution examined

4.The learned Sessions Judge after meticulous examination of the facts, evidence on record, both oral and documentary recorde

5.Death of Bithi Rani Baidya is an admitted fact as it appears from the facts and evidence on record.Deceased Bithi Rani Bai Rabindra Nath Das (PW-5) while in the witness box deposed that on 16.10.2000 he was serving at Civil Hospital, Karimganj as S .On External Appearance

.An average built hindu female aged about 55 years approximately whose rigor mortis is present, Eye open, mouth closed.(1) on Cranium and Spinal Canal

Scalp, skull, vertebrae- As in 1, Membrane-Pale, Brain and spinal cord-Pale.
Thorax

Walis ribs and cartilages - intact, Pleurae- Pale, Larynx and trachea-, Right lung, left lung, Pericardium - Pale, Heart and Abdomen

Walls - intact, Peritonum, Mouth, pharynx, oesophagus- Stomach and its contents- Contain little undigested food Small intestine Muscles, Bones and Joints

.-Nil-

Injuries are antemortem.

-In my opinion death is due to shock and haemorrhage resulted from sustained injuries. Ext.1 is the post mortem report.Ext.1(1) is my signature.The dao is a sharp weapon and such injuries may be caused by dao..

6.From the doctor's evidence it would be apparent that the injuries discovered on the dead body of Bithi Rani Baidya were ant

7.In Ram Kumar Pande v.State of Madhya Pradesh, AIR 1975 SC 1026, the Supreme Court held : .9.No doubt, an FIR is a previous statement which can strictly speaking, be only used to corroborate or contradict the maker We are therefore, required to take assistance from the testimony of other witnesses that produced by the prosecution at the t

8.As we all know that a criminal case is built upon the edifice of evidence which is admissible in law.For that courts requir

9.In this case as we have noticed that out of the 8 witnesses, 5 witnesses turned hostile.Minus these witnesses we are having

10.From the testimony of these witnesses it would appear that PW-6 lodged the FIR (exhibit-2) but he proceeded to the place o

11.Thus, from the evidence of PW-6 we are unable to get any assistance in the context of complicity of the appellant that it

12.Though witness Sadhan Suklabaidya (PW-1), Smt.Usha Rani Baidya (PW-2), Lalit Mohan Baidya (PW-3), Upendra Baidya (PW-4) a

13.PW-3 Lalit Mohan Baidya also deposed that having heard the news about the death of Bithi Rani Baidya he went to the place

14.From the scrutiny of the evidence on record of the witnesses as indicated above, it would appear to us that before calling

15.Now the issue before us is, how far the evidence of hostile witness can be acted upon.Before dealing with the subject we a

16.In the case of Gura Singh, Appellant v.State of Rajasthan, Respondent reported in AIR 2001 SUPREME COURT 330 in para 11 a .11.There appears to be misconception regarding the effect on the testimony of a witness declared hostile.It is a misconceive

12.The terms "hostile", "adverse" or "unfavourable" witnesses are alien to the Indian Evidence Act.The terms "hostile witness "To steer clear of the controversy over the meaning of the terms 'hostile' witness, 'adverse' witness, 'unfavourable' witness .It is important to note that the English statute differs materially from the law contained in the Indian Evidence Act in .The danger of importing, without due discernment, the principles enunciated in ancient English decisions, for, interpreting .xxxxx xxx.

From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradi .The Apex Court while dealing with the case of Mahesh Son of Janardhan Gonnade, Appellant versus State of Maharashtra, Respon .47.PW Prakash, who lodged the report (Ext.28) of the incident, stated that on hearing Sunita's shouts .wachawa wachawa., he

48.PW 1, the complainant, is a medical practitioner and belongs to Village Paoni.He knew the deceased Sunita, her mother Nirm

49.It is the evidence of PW PSI Dhimole that portion marked .A.appearing in the statement of PW 1 was recorded by him correct

50.Laxmibai (PW 2) and Bilkish Begum (PW 3) have also followed the same trend which PW 1 had adopted.They were confronted by

51.Nilkanth (PW 15).is a resident of Village Paoni and he is acquainted with the appellant.It is his evidence that at about 6

52.Shri Prabhakar (PW 17), Special Judicial Magistrate on 5-4-1988 recorded the statements of PW Nilkanth, PW Laxmibai, PW Ar

17.In the case of Gura Singh (supra) the Apex Court while dealing with the testimony of the hostile witness observed that it

18.Therefore, the Hon'ble Apex Court has not laid a rule that the entire testimony of a hostile witness is to be discredited.

19.From the above ratio as laid down by the Apex Court in regard to the testimony of a hostile witness and its acceptance, in

20.It is in the evidence on record that a dao was found lying near the death body of Bithi Rani Baidya which was seized by PW

21.It would also appear from the evidence on record that the appellant was not found present at the time of discovery of the

22.Thus, from the meticulous scrutiny of the facts and evidence on record we are unable to hold that the appellant is guilty

23.In the result, the appeal succeeds.The impugned Judgment and Order of conviction and sentence are set aside.Accused be set

24.For rendering valuable assistance to this court by the Amicus Curiae in deciding this appeal, we quantify Rs.5000/- as fee

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