Sri Diganta Das Vs. the State of Assam.

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Court : Guwahati

Decided On : Feb-14-2011

Judge : Mr. Madan B. Lokur; Mr Mutum B.K. Singh, Jj.

Acts : IPC - Section 302, Code of Criminal Procedure (CrPC) - Section 313.

Appeal No. : Cril. Appeal No. 142 (J) of 2005

Appellant : Sri Diganta Das.

Respondent : The State of Assam.

Advocate for Def. : Mr. D. Das, Adv.

Advocate for Pet/Ap. : Smti. Anupama Devi, Adv.

Judgement :

1.The appellant, being aggrieved by the Judgment dated 8-9-05, passed by the learned Sessions Judge, Tinsukia in Sessions Case No. 83(M)/2004, convicting him under Section 302 IPC and sentencing him to undergo imprisonment for life and also to pay fine of Rs. 1000/- in default of payment, Rigorous Imprisonment for one month, has filed the present appeal.

2.Heard Mrs. Anupama Devi, learned Amicus Curiae for the appellant as well as Mr. D. Das, learned Addl. Public Prosecutor for the State.

3.The prosecution case as projected by the record is that on 4-2-04, in the morning at about 6:30 AM, the accused (appellant herein) killed his mother by slaughtering her neck with a knife while living in a joint dwelling house situated at Stationpara, Digboi and the severed head was thrown in the nearby pond. The brother and sister-in-law of the accused who were also living in a separate room of the said dwelling house witnessed the crime and they informed about the incident to the Police Station. After apprehending the accused with a blood stained knife by S.I, K. Changmai, a written report was lodged by Dimbeswar Das, the brother of the accused, which was registered as Digboi PS Case No.19 of 2004 under Section 302 IPC. During the course of investigation, the severed head was retrieved from a nearby pond at the instance of the accused. After completion of the investigation, a chargesheet was submitted on 13-3-04 against the accused.

4.The learned trial Court, having found prima facie evidence, framed charge under Section 302 IPC against the accused/appellant to which the accused pleaded not guilty and claimed to be tried.

5.During the course of trial, the prosecution, in order to substantiate the charge leveled against the accused/appellant, examined 10 (ten) witnesses. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which the accused claimed himself to be innocent. No defence witness was adduced on behalf of the accused/appellant.

6.The learned trial Court, at the conclusion of the trial, on the basis of the evidence on record and after hearing the submission of the learned counsel appearing for the parties, arrived at the decision that the prosecution has proved beyond all shadow of doubt that the offence of murder was committed by the accused namely, Diganta Das. Accordingly, the accused was convicted under Section 302 IPC and sentenced him to undergo imprisonment for life with fine.

7.We have anxiously perused the statement of the witnesses and other materials on record in order to satisfy ourselves as to whether the prosecution has able to prove the charge leveled against the accused in accordance with law or the conviction and sentence passed by the learned trial Court was justified in the light of the evidence on record.

8.The learned counsel appearing for the appellant, at the outset, states that the accused was mentally unsound at the time of commission of the offence. This plea of insanity was neither taken before the trial Court nor defence witness was produced to prove the same. It is well settled proposition of law that in the criminal trial, the plea of insanity of an accused specially set up, the burden of proof lies upon the accused person to prove it.

9..In the instant case, it appears that suggestion was made to PW Nos.1, 2 and 5 during their cross-examination that the accused was suffering from mental disorder. The said witnesses who are the elder brother, sister-in-law and cousin of the accused, categorically denied the suggestion by deposing that the accused was not suffering from any mental disorder. Besides, the above statement is also supported by PW No.8 (Part I.O), who deposes that he did not find any evidence of mental retardation of the accused during the course of investigation. PW No.10, the Officer-in-Charge of Digboi Police Station, who had also investigated the case stated in his cross-examination that neither he got any evidence of mental disorder of the accused nor the accused was medically examined for that purpose.

10.In view of the statement of the PW Nos. 1, 2, 5, 8 & 10 and having regard to the discussions made above, we are unable to accept the first point raised by the learned counsel appearing for the appellant.

11.The learned counsel appearing for the appellant has further contended that the prosecution case is not supported by the medical evidence. As per the prosecution witnesses, the head of the deceased was severed by a knife which was seized from the possession of the accused under Seizure Memo dated 4-2- 2004, exhibited as Exhibit-5. The net length of the incriminating knife is about 10 1/2 inch with wooden handle stained with blood. Whereas, PW No.7, Dr. Rupak Kumar Gogoi, who conducted the Postmortem examination on the dead body of the deceased opined that the caused of death was due to shock and hemorrhages as a result of the cut wounds described in the Postmortem report marked Exhibit-6. According to the said witness, all the injuries are antemortem and homicidal in nature, which might have been caused by heavy sharp cutting weapon. The injury on the neck is sufficient to cause death of a person in ordinary course of nature.

12.Admittedly, the seized incriminating knife was neither produced before the Court during the course of trial nor sent for chemical examination of the blood stained. The knife cannot be a heavy sharp cutting weapon. It has been held in a catena of decisions that in case of difference between the ocular evidence and the medical evidence, due weightage should be given to the former if the ocular evidence is reliable. In the present case, PW No.2 in no unclear terms states that on the day of occurrence at about 6:15/6:30 AM, she heard the shouting of her mother-in-law that she was being killed, she came out of the room and saw that the accused was sitting on the chest of her mother-in-law and slicing her neck with the help of a knife. She further deposes in the cross-examination that when she saw the accused committing the murder the head was not completely separated, the knife was a small one and hence the head could not be chopped off in a single blow. The accused took some time to chopped off the head. The said statement was not at all shaken in any manner whatsoever. PW No.6 deposes that in the early morning while he was standing in front of his house situated at the distance of about 1/2 km, he saw the accused carrying a head of a woman, which he (accused) threw in a pond situated a little away from his house. The said witness stated in his cross-examination that he saw the accused carrying the head from a distance of 7/8 cubits. We do not find any infirmities in the above statement of the PW Nos. 2 & 6 and that the above statement appears to be quite reliable. Besides, the I.O. as well as the other prosecution witnesses deposed that the knife stained with the blood was seized from the possession of the accused. In the light of the above evidence on record, we cannot rely upon the opinion of PW No.7 by discarding the testimonies of the reliable witnesses.

13.As regards the non-production of the incriminating article, we are of the considered view that since the accused had not denied the seizure of the incriminating knife from his possession, the same cannot be said to be fatal to the prosecution story. The non-production of the incriminating article during the trial may be fatal, when the accused denied the seizure and in case of discrepancy over the presence of the witness at the spot.

14.Lastly, the learned counsel appearing for the appellant argued that the prosecution failed to prove the recovery of the severed head from the pond at the

instance of the accused and as such the benefit of doubt should be extended to the appellant. According to learned counsel, the Investigating Officer did not indicate the location of the pond in the sketch map of the place of occurrence which was marked Exhibit-7. On our perusal, the submissions of the learned counsel appears to be misconceived as the pond wherein the accused had thrown the head of his mother has been indicated in the sketch map and marked the pond as "K".

15.The learned Amicus Curiae appearing for the appellant in support of her submissions cited the decisions in (1) Nasir Ahmed v. State of Assam, 1996 (3) GLT 533, (2) Jatin Talukdar v. State of Assam, 2009 (2) GLT 65 and (3) Dahyabhai Chhaganbhai Thakkar v. State of Gujarat, 1964-AIR (SC)-0-1563. We have carefully gone through the above cited decisions and of the firm view that the said decisions are of no help to the appellant's case as the facts are different.

16.On perusal of the evidence on record, we are of the view that the prosecution has able to establish beyond all reasonable doubt that the accused (appellant herein) has murdered his mother and thus committed the offence punishable under Section 302 IPC. And that, the learned trial Court tried the case strictly as per procedure prescribed by law.

17.Before parting with this Judgment, we would like to thank the learned Amicus Curiae appearing for the appellant for assisting the Court during the course of hearing. She is entitled to receive the fees prescribed by the authority concerned.

18.For the reasons and the discussions made hereinabove, we find no ground to interfere with the impugned Judgment and the Order of conviction and sentence dated 8-9- 2005, passed by the Sessions Judge, Tinsukia in Sessions Case No. 83(M) of 2004. Consequently, this appeal is dismissed being devoid of merit. LCR be transmitted forthwith.