

Md. MuslemuddIn Vs. State of Assam.

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Court : Guwahati

Decided On : Feb-04-2011

Judge : Mr. Madan B.Lokur; Mr. Arup Kumar Goswami, Jj.

Acts : IPC - Section 448/302.

Appeal No. : CRIMINAL APPEAL NO. 52 J OF 2005

Appellant : Md. Muslemuddin.

Respondent : State of Assam.

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

Advocate for Pet/Ap. : Mr.R.M.Choudhury, Adv.

Judgement :

1..This jail appeal is directed against the judgment dated 18.05.05 passed by the learned Sessions Judge, Morigoan in Sessions Case No. 23 of 2005 corresponding to G.R.Case No. 789 of 2002 whereby the appellant was convicted under Section 302 IPC and sentenced to suffer Rigorous imprisonment for life with a fine of Rs. 10,000/-,in default to suffer Rigorous imprisonment for another 5 years.

2..The appellant is accused of committing patricide. The appellant's younger brother Md. Abu Hanif had lodged the ejahar before the Officer In-charge, Morigoan Police Station on 20.12.2002 stating that at around 8 P.M. the accused

had stabbed his father Hafizuddin to death inside the house with a dagger and that he had died on the spot. The said information was received at the Police Station at 4 P.M. of that day. Accordingly, Moirabari P.S. Case No. 64 of 2002 under Section 448/302 IPC was registered.

3..The local people with family members produced the appellant at about 4 P.M. at the Police Station on 26.12.02 and thereafter he was arrested. The appellant had also made confessional statement before the Magistrate on 27.12.02 at around 2 P.M. After completion of investigation, the police submitted chargesheet against the appellant for the offence punishable under Section 302 IPC. The case being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions vide order dated 16.3.05 and accordingly, the Sessions Case No. 23/05 was registered under Section 302 IPC. The charge under Section 302 IPC was framed against the accused and the same being read over and explained to him, he pleaded not guilty and claimed to be tried. However, he being unable to engage a Lawyer, the learned trial Court had appointed an Amicus Curiae to defend him. 4..During the course of trial, in order to establish the prosecution case, the prosecution had examined 8 witnesses whereas defence adduced no evidence.

5..P.W-1 is Abu Hanif who had lodged the ejahar (Ext. 4) on the day of occurrence. While deposing he had stated that his mother (P.W-5) had reported to him that the accused had killed his father with a dagger. He further stated that as was reported to him there was a quarrel between the accused and his younger brother and that the police seized the blood stained dagger and the blood stained Ganji of his father . P.W-1 also stated that the accused did not live with him and his father who lived together along with some others members of the family.

6..P.W-2 Amir Hussain, is a neighbour and a reported witness. According to him, P.W.-6-Jorina Khatoon , daughter in-law of the deceased, went to his house and reported that the accused had murdered her father-in-law. He then went to the house of the deceased and had a word with P.W-5, the wife of the deceased , who informed him that the accused had committed murder. He was also a witness to the inquest report which was exhibited as Ext.1.He was also a witness to the

seizure list exhibited as Ext.2 by which one blood stained iron dagger , the blade of which was 7 1/2 inches long and the handle 11 1/2 inches long, was seized. 7..P.W-3 Ismile Ali is also a reported witness who derived information about the alleged offence from P.W-5, when he went to the house of the deceased hearing some hue and cry in the house of the deceased. He was also a signatory to the inquest report.

8..P.W-4 Deba Kumar Das who is a 2nd Class Judicial Magistrate had deposed that on being satisfied that the accused was ready to make his confession , he had recorded the confession of the accused and had prepared a memorandum, which is exhibited as Ext. 3. Exhibit 3 (3) was the confessional statement of the accused. It would be gainful to quote the confessional statement of the accused :-

" I have not been in house for around last twenty (20) years. My father had driven me out of the house. He does not allow me to live in the house. We have two mothers. Father married two women. My mother's name is Bibi Shakina(P.W-5). I do not know the name of my step mother. She lives in Golaghat. We are seven (7) brothers. On the last Id I came home. After 2 days following the Id, father disallowed me to stay in the house. He drove me out .When I did not want to go out, I had an altercation with my father. Later, a quarrel ensued between two of us. During the quarrel, father hit me on my nape with a brick. As a result, I bled and became senseless. There was a dagger with me at that time. When my father grabbed me again , the dagger in my hand pierced through father's stomach and immediately father died. Out of fear, I ran away to the field at first. Later I went to Moirabari thana. Then police arrested me. I did not intentionally kill my father. Out of carelessness, the dagger in my hand pierced through father's stomach and he died. It was Friday on the day of occurrence. It was evening hours. Father died as a result of my dagger stab. I had become angry as father had disallowed me to live in the house..

9..P.W- 5 Sakina Khatoon is the mother of the accused and also the husband of the deceased. She had been declared hostile by the prosecution. In her cross-examination by the prosecution she had stated that her husband had tried to intervene when the accused came to assault Dilowar, her other son, with a dagger

and that then a quarrel had ensued between the deceased and the accused. In the cross by defence, she had stated that since 10/15 years prior to occurrence, there was quarrel between her husband and the accused son.

10..P.W-6 Musstt. Jarina Khatoon is a daughter -in-law of the deceased, being the wife of the eldest son of the deceased. While her father-in-law was having his meal, there was a quarrel between the accused and Dilowar and the accused had attempted to assault Dilowar with a dagger. In the meantime, according to her, Dilowar fell down and became unconscious. At that point, the deceased was standing near the door. He was pushed inside the house by the accused while she along with her mother-in-law (P.W-5) and one sister-in-law Banesa, who had expired after the occurrence, remained near Dilowar. After sometime she saw Muslemuddin, the accused, running away from the house .Entering the house she saw that her father-in-law was lying with bleeding injury from his chest. He could not speak anything. According to her , she did not witness the actual assault by the dagger but saw the accused immediately running away from the place of occurrence.

11..P.W- 7 Shri Bhupen Sarma, is the Investigating Officer. He had proved the Exhibit 1- the inquest report, seizure of dagger vide Exhibit 2, Exhibit 5- Sketch Map and the seizure of the Ganji vide Exhibit 6 seizure list. He had also proved the seized dagger vide M.Exhibit 1. It was in his evidence that the accused was arrested at 4.P.M of 26.12.02 after the family members had produced him at the police station on 26.12.02 at 4 P.M. 12..P.W-8 is Doctor Rajendra Prasad Bora, who conducted postmortem examination on the deceased Hafizuddin who was about 72-75 years and , who found the following injuries on the deceased:

Injuries

(1).Piercing wound in the left precordial area piercing the heart. (2).Pleura is torn, blood is present on both sides of the chest cavity.

(3).Pericardium is pierced.

(4).Heart is pierced.

No other injury was present. Abdominal wall and viscera were found to be normal, healthy. Others normal.

.According to Doctor, the person died due to blood loss and injury to the heart leading to cardio-respiratory failure.

13..We have heard Mr. R.M.Choudhury, learned Amicus Curiae appointed to assist the Court in the matter. Also heard Mr. D.Das, learned P.P, appearing for the State.

14..The learned Amicus Curiae during the course of his argument has submitted that the learned Sessions Judge was not justified in convicting the accused/appellant under Section 302 IPC. According to him, as per the confessional statement , it is a clear case of culpable homicide not amounting to murder. By placing reliance on the confessional statement he argues that the accused/appellant had no intention to cause death or causing such bodily injuries as is likely to cause death. He further submits that the accused/appellant has been in custody since 26.12.02.

15..The learned Public Prosecutor, on the other hand, tries to sustain the judgment of the learned trial Court. Primarily placing reliance on the deposition of P.W-6, the learned P.P. argues that the offence under Section 302 IPC is well established. He also submits that the confessional statement in which the accused categorically stated that his father died as a result of his dagger blow corroborates the testimony of the P.W-6.The learned Public Prosecutor also submits that the Court should not believe that part of the confessional statement which recited his father hitting him on his nape with a brick resulting in bleeding and subsequently becoming senseless, as ,according to him, no witness had deposed to that effect.

16..We have given our anxious consideration to the materials on record and the arguments advanced by the counsel.

17..A confession must either admit in terms of the offence, or at any rate, substantially all the facts which constitute the offence. The confession of the accused in the instant case contains both exculpatory and inculpatory elements. It

contains- (a) an account of how the accused came to stab the deceased and (b) an account of his reason and circumstances for doing so, the former element being inculpatory and the latter exculpatory. The Hon'ble Supreme Court in *Palvinder Kaur v. The State of Punjab* reported in AIR 1952 SC 354 had laid down that the confession must either be accepted as a whole or rejected as a whole and the Court is not competent to accept only the inculpatory part while rejecting the exculpatory part as inherently incredible. In other words, law does not permit a confessional statement to be spilt up. In view of the above, the submission of the learned State Counsel that we should reject a part of the confessional statement and accept the other part implicating himself, cannot be accepted. We must either accept the confessional statement as a whole or reject the same.

18..Confession can be acted upon if the Court is satisfied that it is voluntary and that it is true. The voluntary nature of the confession depends upon whether there was any threat, promise or inducement and its truth is judged in the context of the whole of the prosecution case. The confession must be consistent with the proved facts and not run counter to them.

19. .The confessional statement of the accused Exhibited as Ext. 3(3) indicates that the father did not allow the accused to live in the house and that the accused had come for the purpose of Id Festival, and that after 2 days following the Id Festival, the accused had been driven out from the house and an altercation had ensued when he did not want to go out. His father hit him on his nape with a brick as a result of which he started bleeding and that he had fainted. It was also in his confessional statement that at that time he had a dagger with him and when the father grabbed him again, the dagger in his hand , due to carelessness, pierced his father's stomach as a result of which he died. He further stated that he had become angry as his father had not allowed him to live in the house. He had further stated that he had no intention to kill his father. The evidence of Doctor P.W-8 was that the injuries were in the chest and heart was pierced. Though four injuries were cited , having regard to the location of the injuries, it would appear that the said injuries were not inflicted separately but was occasioned by one single stab. P.W-6,in her deposition, it is to be noted, had stated that she did not see the actual assault and she was not aware of the circumstances immediately

preceding the injuries which were inflicted by the accused by dagger and she only saw the accused running away immediately. It is also in the evidence of P.W-6 that at first the quarrel had started between the accused and his brother Dilowar and the deceased appeared in the scene subsequently. From the testimony of the Magistrate, who was examined as P.W-4, it is clear that the appellant was produced before him on 27.12.02. It is in his evidence that he duly cautioned the appellant and had followed the procedural safeguards and it was only when he was satisfied that the accused was ready to make a statement, he had recorded the confessional statement. Testimony of the P.W.-4 was not shaken by the defence except to the extent that in recording the police station name in column No. 7, Morigaon was recorded by mistake in place of Moirabari. 20..There is no other evidence in the instant case to show affirmatively that any portion of the exculpatory element in the confession is false. We find that the confession is in sync with the prosecution case generally and there is also no inherent inconsistency between the confessional statement and the testimony of P.W-6. We do not find any procedural infirmity in recording the confessional statement of the accused and we are inclined to accept that the confessional statement of the accused was true and voluntary. Even in his 313 Cr.P.C.statement, the accused, in response to a question put to him relating to his confession before the Magistrate, had said that he had confessed his guilt. The wrong mentioning of the police Station by the P.W-4, in our considered opinion, do not in any way detract the voluntariness and truthfulness of the confessional statement. The materials on record, in our considered opinion, do not indicate that the accused had intention to kill his father and we hold so accordingly.

21..The discrepancies regarding the location of the injuries- stomach by the accused, and chest- according to the postmortem report and the evidence of Doctor P.W-8, in our opinion, is of not much consequence as in the scuffle, it may not have been possible to exactly locate the place where the accused had inflicted the injuries .

22..We have already noted the size of the dagger. Someone wielding such a dagger and inflicting injuries with it ,would have the knowledge that the assault is likely to either cause death or to cause such bodily injuries as is likely to cause

death. We have already recorded that the accused had no intention to cause death to the deceased.

23. In the circumstances, we hold that the accused is guilty under Section 304 Part II IPC instead of Section 302 IPC and accordingly, set aside the judgment dated 18.05.05 passed by the learned Sessions Judge, Morogoa in Sessions Case No. 23 of 2005. The accused/appellant is sentenced to the period already undergone. The accused/appellant is set at liberty forthwith, if he is not required to be in custody in any other criminal case.

24.. It is ordered that the Amicus Curiae is entitled to get his fee which is quantified at Rs.5000/-

25.. In the result, this appeal stands partly allowed.

26.. L.C.R. be sent down immediately.

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