

GAHC010006002016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J) 20/2016

1:GUNJA MURA

VERSUS

1:THE STATE OF ASSAM

Advocate for the Petitioner : MR.Z HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE HITESH KUMAR SARMA
HONOURABLE MR. JUSTICE MIR ALFAZ ALI

JUDGMENT & ORDER (ORAL)

Date : 30-11-2018

Mir Alfaz Ali, J.

1. The sole appellant Gunja Mura was convicted under Section 302 IPC by the learned Sessions Judge, Jorhat, in Sessions Case No. 184 (JJ)/2014 and sentenced to imprisonment for life and fine of Rs. 5,000/- with default stipulation.
2. Mr. Z. Hussain, learned amicus curiae for the appellant and Mr. N.K. Kalita, learned Addl. P.P., Assam were heard. We have perused the evidence and materials brought on record.

3. As per the prosecution case, the appellant Gunja Mura killed the victim Arnel Dengra by inflicting injury with axe. An FIR was lodged by one Smt. Pramila Jatama, Secretary of women V.D.P., on the basis of which, police registered Titabar P.S. Case No. 212/2014 and commenced investigation. During investigation, police examined the witnesses, inquest report was prepared by S.I. Nokul Ch. Phukan (PW-7) and postmortem examination was conducted by Dr. Nitu Kumar Gogoi (PW-8).

4. Dr. Nitu Kumar Gogoi, who conducted postmortem examination found the following injuries on the body of the victim.

- “1. Chop wound of size 8 cm x 2 cm x cranial cavity deep occipital region of head, 10 cm below the vertex and 6 cm away from right ear lobe.
2. Chop wound of size 5 cm x 2 cm x cranial cavity deep over occipital region of head 1 cm above injury No. 1.
3. Chop wound of size 8 cm x 2 cm x cranial cavity deep over middle right temporal region of head.
4. Chop wound of size 8 cm x 2 cm x cranial cavity deep over left temporal region middle part.
5. Chop wound of size 8 cm x 2 cm x bone deep over right side of cheek extending upto angle of mandible.
6. Chop wound of size 9 cm x 2 cm x muscle deep extending from root of nose obliquely to right angle of mouth.”

5. In the opinion of the doctor, the death was due to coma, as a result of the injury and all the injuries were antemortem, caused by moderately heavy to heavy sharp cutting weapon, and was homicidal in nature. Time since death approximately 12 to 18 hours. During cross examination, it was elicited, that the injuries found on the body of the victim could not be self inflicted.

6. On completion of investigation charge sheet was laid against the appellant under Section 302 IPC and eventually he stood trial.

7. From the evidence of the doctor, it was abundantly clear, that the death of the victim was homicidal, and in fact, the homicidal death of the victim was not disputed by defence. It is revealed from the impugned judgment and also the record, that there was no direct evidence

or eye witness of the occurrence. Learned Sessions Judge basically relying on extra-judicial confession made by the accused/appellant, recorded his conviction and imposed sentence as indicated above.

8. PW-1, who happens to be the Secretary, women V.D.P. and also the informant, testified, that having come to know about the occurrence, she came to the place of occurrence and found the victim lying dead with injuries. The accused/appellant was also present there and on being asked by her, the appellant told, that he killed the victim with axe.

9. PW-2 also stated in the same tune, that hearing about the occurrence, he rushed to the place of occurrence and found the victim lying dead. The accused was also there and on being asked by him, the accused/ appellant confessed, that he killed the victim by an axe. PW-4, PW-5 & PW-6 also stated in the same tune, that having come to know about the occurrence, they immediately arrived the place of occurrence and on being asked by them, the accused confessed, that he had killed the victim by an axe. According to PW-3, while he was in his house, he heard Gunja Mura saying "I have killed Arnel."

10. It is the settled principle of law that confessional statement be judicial or extra judicial, the test for relying on confessional statement is its truthfulness and voluntariness. If extra judicial confession is made voluntarily and it is found to be true, there is no bar in relying on such extra judicial confession. Whether extra judicial confession is made voluntarily or it reflected the truth, would certainly depend upon credibility of the witnesses before whom, the extra judicial confession was made. In the instant case, PW-4 before whom, the extra judicial confession was made, is a person closely related to both the accused and the victim and all other witnesses belonged to the same village, who immediately arrived at the place of occurrence. All the six witnesses, before whom the extra-judicial confession was, made appears to be independent and natural witnesses, inasmuch as, no material could be brought on record to show even remotely, that the PW-1, PW-2, PW-3, PW-4, PW-5 & PW-6 were inimical to the accused and as such, the evidence and materials on record does not reflect anything to suspect the credibility of the prosecution witnesses being PW-1, PW-2, PW3, PW-4, PW-5 & PW-6, who have deposed about the extra judicial confession.

11. Added to the above, during examination under Section 313 CrPC, when the incriminating evidences adduced by prosecution witnesses, more particularly the extra judicial confession were put to the accused, he admitted to have made such extra judicial confession,

which reinforced the oral testimony of the PW-1, PW-2, PW-3, PW-4, PW-5 & PW-6 as to the extra judicial confession and its truthfulness. There was no material on record to suggest even remotely, that the extra judicial confession made by the accused was not voluntary. However, while answering to the general questions during examination under Section 313 CrPC, the appellant tried to exculpate himself, by saying, that there was quarrel between him and the victim and in course of physical tussle due to quarrel, the victim sustained injury. However, he pleaded ignorance, as to how the victim sustained the injuries. For better appreciation, it would be apposite to reproduce here the answers given by the appellant to the questions No. 2, 5, 7, 9 and 17 put to him during examination under Section 313 CrPC.

“Q. No. 2: PW-1 further deposed that after getting the information she went to the place of occurrence and after going there she found Arnel lying dead in the house and on being asked you told that you killed Arnel with an Axe.

What do you say?

Answer: Yes.

Q. No. 5:PW-2 further deposed that on being asked you told him that you killed Arnel with an axe.

What do you say?

Answer: Yes.

Q. No. 7: PW-3 Bina Mura deposed that about one year back, at about 8 p.m. while she was at home, she heard shout of you saying that you have killed Arnel and after hearing the same, she came out and saw you at your house saying that you killed Arnel.

What do you say?

Answer: Yes.

Q. No. 9: PW-4 further deposed that after getting the information she immediately went to the place of occurrence and found Arnel lying dead in a pool of blood and also found you at the courtyard of your house and on being asked you told that you killed Arnel with a kuthar (axe).

What do you say?

Answer: Yes.

Q. No. 17: Do you have anything else to say?

Answer: On the date of the incident I went to the market as I was not having any money therefore, I told to Arnel to bring money but after waiting in the market for Arnel for quite long time I came back without purchasing anything and after coming home I found Arnel at home in a totally drunken condition. When I asked Arnel that why he did not go to market then he did not tell me anything and got angry and started quarrelling with me and due to which physical tussle started between us and in the meantime Arnel got injured. I do not know how he died.”

12. What is important to note is that the appellant, while answering to the specific questions relating to the incriminating evidence under Section 313 CrPC, though, admitted to have killed the victim by inflicting injuries with axe, in his answer to the general question, he tried to explain the circumstances, as to how the occurrence took place and stated that there was quarrel and mutual fight between him and the deceased and in course of such quarrel and fight, the victim sustained the injuries. However, he further stated, that he did not know how the victim died and thereby tried to exculpate himself. When the accused confesses in his examination, under Section 313 CrPC, that there was quarrel and fight between himself and the victim and the evidence and material does not show the involvement of any third person, accused obviously owe an explanation, as to how the victim sustained the injuries and Section 106 put a burden on the accused to explain such circumstance. Failure of the accused to explain or trying to evade such explanation as to the inculpatory circumstances, certainly raises the finger of accusation to the accused. In the present case the accused apparently admitted to have confessed before PW-1, PW-2, PW-3, PW-4, PW-5 & PW-6, that he inflicted the injuries to the victim by an axe. He also confessed during examination under Section 313 CrPC, that there was fight between the victim and himself.

13. It is now settle position, that when the accused made both inculpatory and exculpatory statement during examination under Section 313 CrPC, it is possible to rely on inculpatory part of the statement for convicting the accused, if the two parts can be separated and exculpatory part is found to be false. In the present case, the accused confessed before the PW-1, PW-2, PW-3, PW-4, PW-5 & PW-6, that he killed the victim by inflicting injury with axe and such extra judicial confession was admitted and confirmed by the appellant, during examination under

Section 313 CrPC. The medical evidence also lent support to the extra judicial confession, so far the nature of injury and the weapon used in the offence were concerned. Therefore, in view of all these evidence, the exculpatory part of the confessional statement made by the accused during examination under Section 313 CrPC, that he had no knowledge as to how the victim sustained injuries, cannot be accepted as true, in absence of proper and satisfactory explanation by the accused/appellant. We are not oblivious of the proposition of law, that in a criminal trial, accused has the right to remain silent. But when the evidence and material brought on record and the circumstances proved, unless explained, tend to attribute culpability to the accused, and the accused chooses not to explain such circumstance and keeps mum by exercising his right of silence or tries to evade the same, court cannot be blamed for fastening him with criminal liability. In the light of the above facts and circumstances, we are of the considered opinion, that there is no difficulty in relying, only on the inculpatory part of the confessional statement made during examination under Section 313 CrPC, which is in consonance with other evidence, more particularly the extra judicial confession; discarding the exculpatory part as indicated above.

14. Thus, the confession made by the appellant during the examination under Section 313 CrPC also makes it abundantly clear that the accused inflicted injury to the victim with axe causing his death. Though, the statement made during examination of the accused under Section 313 CrPC is not evidence strict-sensu, law is well settled by now, that the statement made by the accused in answer to the question put to him during examination under Section 313 CrPC, can be used against him by virtue of the provision of sub-section (4) of Section 313 CrPC.

15. This Court had the occasion to deal with question, as to the use of confession made by an accused during examination under Section 313 CrPC, in the case of ***Sri Mintu Kalita @ Mitu Kalita Vs. State of Assam*** reported in ***2006 (1) GLT 393*** and subsequently also in another decision in ***Baiju Baby and Ors. Vs. State of Arunachal Pradesh & Ors.*** reported in ***2009 (1) GLT 405***. This court in the case of ***Mintu Kalita*** (supra) relying on a decision of the Apex Court in State of ***Maharashtra Vs. Sukhdev Singh*** reported in ***1992 Cri. L.J. 3454*** observed as under:

“From what has been observed and laid down in Sukhdev Singh (supra), it also becomes transparent that if an accused person, in his examination under Section 313, Cr.P.C., confesses to the commission of the offence(s) charged with, the court may, relying upon such confession, proceed to convict the accused and that it is only if the accused does not confess and/or chooses to explain the circumstances appearing in the evidence against him or set up his own version of the occurrence claiming to the effect that he had committed no offence, the statement of the accused, made during the course of examination under Section 313 CrPC, can be considered in its entirety along with other pieces of evidence on record. To put it differently, there is no impediment in law for a court for found conviction of an accused on his confession made by him during his examination under Section 313, Cr.P.C.”

16. The Apex Court in the case of **Sukhdev Singh** (supra) clearly held that such statement recorded under Section 313 CrPC can be used for proving the guilt of the accused and held as under:

“51. That brings us to the question whether such a statement recorded under [section 313](#) of the Code can constitute the sole basis for conviction. Since no oath is administered to the accused, the statements made by the accused will not be evidence stricto sensu. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he gives false answers. Then comes sub-section (4) which reads

"313. (4). The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed."

Thus the answers given by the accused in response to his examination under [section 313](#) can be taken into consideration in such inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, though not strictly evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. See [State of Maharashtra v. R.B. Chowdhari](#), [1967] 3 SCR 708. This court in the case of [Hate Singh v. State of Madhya Bharat](#), 1953 CrL.J.1933 held that an answer given by an accused under [section 313](#) examination can be used for proving his guilt as much as the evidence given by a prosecution witness. In [Narain Singh v. State of Punjab](#). [1963] 3 SCR 678 this Court held that if the accused confesses to the commission of the offence with which he is charged the Court may, relying upon that confession, proceed to convict him. To state the exact language in which the three-Judge Bench answered the question it would be advantageous to reproduce the relevant observations at pages

684-685 :

"Under section 342 of the Code of Criminal Procedure by the first sub-section, insofar as it is material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under section 342 is primarily to be directed to those matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation - if any, of the incident which forms the subject-matter of the charge and his defence. By sub-section (3), the answers given by the accused may "be taken into consideration" at the enquiry of the trial. If the accused person in his examination under section 342 confesses to the commission of the offence charges against him the court may, relying upon that confession, proceed to convict him, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety.

Sub-section (1) of section 313 corresponds to sub-section (1) of section 342 of the old Code except that it now stands bifurcated in two parts with the proviso added thereto clarifying that in summons cases where the presence of the accused is dispensed with his examination under clause (b) may also be dispensed with. Sub-section (2) of section 313 reproduces the old sub-section (4) and the present sub-section (3) corresponds to the old sub-section (2) except for the change necessitated on account of the abolition of the jury system. The present sub-section (4) with which we are concerned is a verbatim reproduction of the old sub-section (3). Therefore, the aforesaid observations apply with equal force."

17. In the instant case, apparently, the accused/appellant, in his examination under Section 313 CrPC confessed, that there was quarrel and fight between him and the victim. He also admitted to have made extra judicial confession, regarding causing death of the victim by inflicting injuries with the axe. Therefore, examination of the accused under Section 313 CrPC, wherein, he confessed to have committed the offence, clearly lent support to the extra judicial confession made to PW-1, PW-2, PW-3, PW-4, PW-5 & PW-6. The medical evidence, as indicated above, which shows that injuries were caused by heavy sharp weapon also lent

support to the oral testimony of PW-1, PW-2, PW-3, PW-4, PW-5 & PW-6 as to the extra judicial confession as well as the confession of the accused during his examination under Section 313 CrPC. Thus, extra judicial confession coupled with the confession made during examination under Section 313 CrPC, coupled with the medical evidence left no room for doubt, that the accused inflicted injuries to the victim with axe, which caused his death. As many as 6 chop wounds were inflicted on the vital part of the body of the victim by heavy weapon like axe, which itself speaks loud and clear, that the accused had no other intention but to cause death of the victim or to cause such bodily injury which was sufficient in the ordinary course of nature to cause death.

18. In view of the above evidence, which clearly established beyond all reasonable doubt that homicidal death of the deceased was caused by the accused with requisite intention, to constitute an offence of murder under Section 300 IPC, we are in complete agreement with the finding of the learned trial court. Therefore, we confirm and upheld the conviction recorded and sentence imposed upon the appellant by the learned Sessions Judge. Accordingly, the appeal fails.

19. Appreciating the assistance rendered by Mr. Z. Hussain, learned Amicus Curiae, we hereby provide that he will be entitled to Rs. 7500/- as fee, which shall be paid to him by the Gauhati High Court Legal Services Committee upon production of a copy of this judgment.

20. Send down the LCR.

JUDGE

JUDGE

Mkk

Comparing Assistant