

GAHC010213852015



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

Case No. : CRL.A(J) 111/2015

1:SATYAJIT GOGOI @ DAO BARUAH

VERSUS

1:THE STATE OF ASSAM

2:SRI RAM KHANIKAR
S/O-LT. MAHESWAR KHANIKAR
VILL-AMGURI SASSANI
P.S.-NAHARKATIA
DIST.-DIBRUGARH
ASSAM

Advocate for the Petitioner : AMICUS CURIAE

Advocate for the Respondent :

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 04.12.2018

Date of Judgment & Order : 29.11.2019

JUDGMENT & ORDER (CAV)

(M.R. Pathak, J)

This appeal from jail has been preferred by the accused/appellant, namely, Sri Satyajit Baruah @ Dow Baruah being aggrieved with the judgment and order dated 31.08.2015 passed by learned Additional Sessions Judge, Dibrugarh in Sessions Case No.

189/2008, whereby he has been convicted under Section 302/448 IPC for committing murder of Jugananda Baruah and sentenced to undergo Rigorous Imprisonment for life with fine of Rs. 2,000/-, in default, to undergo further Simple Imprisonment for 3 (three) months for committing the offence under Section 302 IPC and to undergo Rigorous Imprisonment for 6 (six) months for committing offence under Section 448 IPC, where both the sentences to run concurrently.

2) The case of the prosecution is that at about 04:00 p.m. on 14.04.2004 PW1, Sri Ram Khanikar, lodged an FIR before the Officer-in-Charge of Naharkatia Police Station stating that in the afternoon at about 02:00 p.m. of the same day, Sri Dow Baruah, Son of Nareswar Baruah hacked to death his brother-in-law Jugananda Baruah, Son of Late Jonai Baruah, inside his house with a sharp weapon and fled away from the scene. By the said FIR, the informant requested the authority concerned to take necessary steps after investigating the matter.

3) On receipt of the aforesaid FIR Naharkatia Police Station Case No. 38/2004 under Sections 448/302 of the Indian Penal Code corresponding to G.R. Case No. 647/2004 was registered. The case was investigated by PW. 7, Mustakul Haque, SI of Police. In the course of the investigation police visited the place of occurrence, conducted Inquest on the dead body of the deceased (Exhibit-3, Inquest Report), sent the said dead body to the Assam Medical College & Hospital, Dibrugarh for its post mortem examination, recorded the statement of the persons acquainted with the alleged crime under Section 161 CrPC, sent two witnesses, namely Utpol Gogoi and Kusha Gogoi to the Judicial Magistrate for recording their statement under Section 164 CrPC (Exhibit-2), arrested the accused who surrendered before Judicial Magistrate, collected the postmortem report of the deceased and on conclusion of the investigation, finding sufficient materials against the accused Dow Baruah, filed the Charge-Sheet (Exhibit-5) in the case on 19.05.2004 vide Charge Sheet No. 55/2004 against the accused appellant under Sections 448/302 IPC. The offence under Section 302 IPC being exclusively triable by the Court of Sessions, learned Sub-Divisional Judicial Magistrate (Sadar), Dibrugarh vide order dated 26.11.2008 committed the said G.R. Case No. 647/2004 to the learned Sessions Court, Dibrugarh, which was accordingly registered and numbered as Sessions Case No. 189 of 2008.

4) Learned Sessions Judge, Dibrugarh by his order dated 22.12.2008 forwarded the said Sessions Case No. 189/2008 to the Court of learned Additional Sessions Judge (FTC), Dibrugarh for disposal, who accordingly on 08.09.2009 framed charges under Sections 448/302 IPC against the accused/appellant, which was read over and explained to him, to which the accused appellant pleaded not guilty and claimed to be tried. Accordingly, the Trial of the case began. During trial, by order dated 16.03.2013, learned Sessions Judge, Dibrugarh withdrawn the said Sessions Case No. 189/2008 from the Court of learned Additional Sessions Judge (FTC), Dibrugarh and transferred it to learned Additional Sessions Judge, Dibrugarh for disposal.

5) In the trial, 7 (seven) witnesses were examined on behalf of the prosecution and none on behalf of the defence, but the defence cross-examined the prosecution witnesses. On conclusion of recording of evidence of the prosecution witnesses, learned Trial Judge on 24.08.2015 recorded the statement of the accused/appellant under Section 313 CrPC. On conclusion of the trial, by the impugned Judgment dated 31.08.2015, the accused/appellant was convicted and sentenced as aforesaid, giving rise to this appeal.

6) To begin with, let us observe the evidence tendered by the prosecution in the case.

7) PW.1, Sri Ram Khanikar, informant of the case and brother-in-law of the deceased deposed before the Court that the incident took place about 6/7 years back, around 03.00 pm, while he was at home, a co-villager of Jugananda informed him that Jugananda, his brother-in-law was hacked to death in his house itself by the accused Dow Baruah. Getting the said information, he went to the house of Jugananda saw him lying on the ground, with cut injuries in his neck, who was already dead. He also deposed that police arrived at the place of occurrence, took away the dead body to the police station, he too went there and lodged the *ejahar* (Exhibit-1) and that a person in the police station wrote the said *ejahar* as per his version.

During his cross examination, PW.1 stated that the said *ejahar* was not read over to him nor did he read it and at first one boy from the village, whose name he does not know, informed him about the incident that accused Dow Baruah hacked the deceased to death and that he saw the injuries on the neck of Jugananda and that police recorded his

statement.

8) PW.2, Dhanudhar Baruah is also a hearsay witness, who went to participate in a *Husori* (traditional group song during Bohag Bihu), returned home in the night and was not present on the date of the incident and only in the morning of the following day, children informed him that Jugananda was dead and on inquiry from the villagers he learnt that the accused had killed Jugananda.

During his cross examination, he stated that police did not examine him and that he learnt about the incident from the elders in the village.

9) PW.3, Sri Padmeswar Baruah, a co-villager of the accused and another hearsay witness of the incident, who also went out to participate in the Bihu festival, in the following day morning learnt from the family members about the incident that someone had killed Jugananda. At this stage said PW.3 was declared hostile by the prosecution.

During his cross examination by the prosecution PW.3 denied to have stated before police that at about 02:22 pm on 14.02.2004 while he was keeping thatch on his cowshed, his *Nabou* (sister-in-law/elder brother's wife) Bihuti Baruah wailed that Jugananda had been hacked with dao and on hearing the same he immediately came to *Nabou's* house and saw his nephew Jugananda lying inside the house in a pool of blood with cut injury on his neck and that the neighbours immediately gathered therein and then *Nabou* told that while she was chatting with Jugananda, Kusha and Momaiti, after participating in the *Bihu* festival, accused Dow entered the house with a dao in his hand and without saying any word, he gave a cut blow on Jugananda with the *dao* and fled away from the said place. PW.3 denied that he made such statements before police and also denied that he made false statement before the Court for the sake of the accused. (Prosecution placed the statement of PW.3 made under Section 161 CrPC, made before the Investigating Officer during investigation of the case).

During his cross examination by the defence, the PW.3 stated that the deceased Jugananda was his neighbour, police did not examine him and that he does not know about the incident.

10) PW.4, Tulan Baruah, brother of the deceased is also a hearsay witness to the incident

who went to the house of his mother-in-laws at Dighali along with his wife PW.5 and reached home two days after the incident and learnt from the villagers that accused had hacked his brother Jugananda to death inside the house during day time.

During his cross examination PW.4 stated that police did not interrogate him in connection with the said incident and that his friend Tankeswar Phukan and his neighbour Bhaben Baruah told him about the incident. He stated that PW.1 Ram Khanikar is his brother-in-law, who is in jail for the last 5/6 years in connection with a murder case. PW.4 denied the suggestion of the defence that said Tankeswar and Bhaben did not tell him about the incident and that he had adduced false evidence.

11) PW.5, Smti Rita Mohan Baruah, sister-in-law of the deceased Jugananda and wife of PW.4, a hearsay witness deposed that the deceased was her younger brother-in-law who died years back and on the date of the incident she was in the house of her mother with her husband and learnt about the incident after two days, on reaching home, that the accused Dow @ Satyajit hacked her brother-in-law and that police made enquiry.

During her cross examination by defence PW.5 stated that Gangadhar and all other villagers told her that the accused had hacked Jugananda and that police did not interrogate her nor she saw the dead body and that PW.1 Ram Khanikar is her *Bhindeu* (husband of elder-sister) and that she had come to know that said PW.1 is presently in jail in connection with a murder case.

12) PW.6, Kusha Gogoi deposed before the court that the incident occurred about 11 years back on '*Bohag Bihu*' day when he along with Utpal Gogoi and the deceased Jugananda were sitting inside the house of the deceased Jugananda. He deposed that being *Bor-Bihu*, he and Utpal were invited by Jugananda to his house and at the time of occurrence he along with Utpal, Jugananda and mother of Jugananda were sitting inside a room in the house of Jugananda and after having food, were taking Beattle nut and then, suddenly the accused Dow Baruah @ Satyajit came with a dao in his hand and attacked Jugananda from his back, gave dao blows on the head and back of the deceased and then fled away by the front door of Jugananda's house and out of fear he along with Utpal went out from Jugananda's house. He also deposed that later he came to know that family members of Jugananda took him to

hospital and he died on the way. He further deposed that police recorded his statement in connection with the case and also sent him before the Magistrate for recording of his statement, where Exhibit-2 is his statement before the Magistrate and he identified his signature in the said Exhibit.

During his cross examination by defence, PW.6 stated that as the deceased Jugananda was from his village he had relation with him and at the time of the incident he, Utpal and Jugananda were sitting and that when he entered the house of Jugananda, mother of Jugananda was also present in the said house. He stated that whatever he had stated before the Investigating Officer, same was stated before the Court. He stated that there are about 10/12 residential houses near the house of the deceased and his residence is about Km away from the house of the deceased. He stated that accused Dow Baruah is the cousin brother of the deceased Jugananda, who used to reside near the house of the deceased. He denied the suggestion that accused Dow Baruah entered the house of Jugananda and chased Jugananda. He also denied that he deposed against accused Dow Baruah as he had enmity with him. He also denied that he deposed before the Magistrate about the incident as directed by police and further denied that the accused was not present in the village on the date of the incident. However, he stated that he was not aware about the relationship between the accused and the deceased.

13) PW.7 Mustakul Haque, an Assam Police Personnel and the Investigating Officer of the case deposed that on 14.04.2004 while serving as in-charge Sassoni Out Post under Naharkatia Police Station, PW.1 Ram Khanikar lodged the FIR (Ext.1) of the case that was registered as Naharkatia P.S. Case No.38/2004 under Section 448/302 IPC and he investigated the said case as endorsed to him by the Officer-in-Charge of Naharkatia Police Station. He deposed that during his investigation he visited the place of occurrence, recorded the statements of the witnesses, conducted the inquest of the deceased person as the Circle Officer, Naharkatia circle in spite of giving requisition could not come as he was absent, Exhibit-3 is the Inquest Report wherein he identified his signature, sent the dead body of the deceased for post mortem examination issuing necessary challan (Exhibit-4), identified his signature in it, collected the post mortem examination report of the deceased from the Assam Medical College, Dibrugarh, forwarded Utpal Gogoi and Kusha Gogoi (PW.6) to the Magistrate

for recording of their statements under Section 164 CrPC, arrested the accused on 14.05.2004 who surrendered before the Judicial Magistrate and during investigation, finding sufficient evidence, submitted the charge sheet in the case on 19.05.2004 (Exhibit-5) and identified his signature therein. PW.7 also deposed that PW.3 (who was declared hostile by the prosecution) during investigation stated before him that around 02:00 pm on 14.04.2004 while he was in the cowshed, his sister-in-law Bibhuti Baruah came out crying and stated that Jugananda was assaulted by a dao and on hearing it he went to the house of his sister-in-law and saw his nephew Jugananda was bleeding with injuries, lying on the floor and saw the cut injuries on his neck and that immediately neighbours gathered in the place of occurrence. PW.7 also deposed that PW.3 stated before him that at the time of the incident his sister-in-law, the deceased Juganaga, Kusha (PW.5) and Momaiti were sitting together and chatting and then accused Dow entered the said room with a dao and without any reason the said accused hacked Jugananda with the said dao and fled away from the place of occurrence and that the facts were told to him by his sister-in-law Bibhuti Baruah.

During his cross examination by defence, said PW.7 stated that the house of the deceased consists of 3 (three) rooms and the entry to the said house was from the front side. He also stated that he recorded statementx of Momaiti @ Utpal Gogoi and Kusha Gogoi (PW.6) on 20.04.2004 and that those two persons did not appear before him voluntarily prior to 20.04.2004 to report about said incident. He also stated that house of the deceased is near to the house of Padmeswar Baruah (PW.3) and Tulan Baruah (PW.4). He denied the suggestion that he did not visit the place of occurrence and did not prepare the sketch map of the place of occurrence. He also stated that during investigation it was found that the accused had a heated altercation with the deceased and his two friends, [Utpal Gogoi and Kusha Gogoi (PW6)] in the house of Kusha Gogoi (PW.6) and thereafter, the accused went to his house, whereas the deceased along with his those two friends also went away and that the weapon of assault involved in the case was not seized by him and denied the suggestion that Kusha Gogoi and Utpal Gogoi deposed before the Magistrate as directed by him. He denied the suggestion that either one of the witness Mumaiti @ Utpal Gogoi or Kusha Gogoi (PW.6) were the assailant and for that reason they did not appear before him immediately and that he investigated the case perfunctorily and further denied that he did not find any

material against the accused and submitted a false charge sheet in the case.

14) After completion of the recording of evidence of the prosecution witnesses, the learned Trial Judge recorded the Statement of the accused under Section 313 CrPC on 24.08.2015 wherein the accused denied all the acquisitions made against him by the prosecution witnesses in their evidence adduced before the Trial Court, stating those to be false. On being enquired by the learned Trial Judge, the accused refused to give any evidence from his side.

15) Heard Md. Zahangir Hussain, learned Amicus Curie for the accused/appellant and Ms. Bornali Bhuyan, learned Additional Public Prosecutor, Assam for the State.

16) Md. Hussain learned Amicus Curie on behalf of the accused appellant submitted that the prosecution failed to prove beyond all reasonable doubt that it is the accused who had committed murder of the deceased Jugananda. He stated that prosecution did not examine the autopsy doctor to prove that the death of the deceased Jugananda was homicidal in nature. For all these reasons learned Amicus Curie submits that the impugned judgment of conviction and sentence should be set aside and quashed and the accused appellant should be set at liberty.

17) Ms. Bhuyan, learned Additional Public Prosecutor on the other hand submitted that the learned Trial Court has rightly recorded the Judgment of conviction and stated that prosecution by adducing evidence of its witnesses could prove that it is the accused who had committed murder of the deceased Jugananda.

18) We have considered the submissions of the learned counsel for the parties and perused the evidences on record, both oral and documentary and also the judgment of conviction passed by the learned Trial Court.

19) We have noticed that though the postmortem examination was done on the body of the deceased, but the concerned autopsy doctor was not examined by the prosecution. However, the postmortem report of the deceased was a part of the Charge Sheet Exhibit-5. The Inquest report of the deceased, Exhibit-3, was proved by PWs. 1 and 7 and it mentions three injuries – (i) cut injury of 4 inches X ½ inch on the back side of head towards left,

above neck, (ii) cut injury of 4 inches X 1 inch on the back side of neck and (iii) cut injuries on the palm of the hand towards back side. On perusal of the postmortem report of the deceased we have noticed that it stated about three injuries (a) incised wound over the back of the neck 13 x 5 cm cutting 2nd cervical vertebrae, (b) incised wound over the left fronto parietal region 20 x 2 cm cutting (illegible) and (c) Three incised wounds on the dorsum of the left hand 2 x 1, 1.5 x 1 and 0.5 x 0.5 cm skin deep, where the injuries were antemortem, caused by heavy sharp cutting weapon and are homicidal in nature. The postmortem report of the deceased though not proved by the prosecution examining the autopsy doctor but it supports the inquest report, Exhibit-3 about the injuries found on body of the deceased.

20) We have also seen the evidence of PW.6, Kusha Gogoi, an eye witness to the incident, who deposed before the Court that he, Utpal, Jugananda and Jugananda's mother while sitting inside a room in the house of Jugananda (the deceased) on the day of *Bor-Bihu*, suddenly the accused Dow Baruah @ Satyajit came with a dao in his hand and attacked Jugananda from his back, gave dao blows on the head and back of the deceased and then fled away by the front door of victim's house. This evidence remained intact and unshaken by the defence. Moreover, his statements made before the Magistrate under Section 164 CrPC, Exhibit-2, recorded on 22.04.2004 supports his evidence. Nothing was placed before the Court by the defence to disbelief the said evidence of the eye witness, PW.6.

21) It is well settled that conviction can be based on the testimony of a single witness, if he is wholly reliable, as the Section 134 of the Evidence Act has not stipulated and has not stated about requirement of any particular number of witnesses to establish a case and that conviction can be based on the testimony of single witness, if he/she wholly reliable and corroboration may be necessary when he is only partially reliable. We found the evidence of PW.6 to be reliable, unblemished and beyond criticism and we are satisfied that he spoke the truth.

22) For the reasons above and considering the entire evidence on record including the Exhibits exhibited by the prosecution, we are of the opinion that the prosecution have proved the guilt of the accused appellant Satyajit Gogoi (Baruah) @ Dow Baruah beyond reasonable doubt and the impugned judgment and conviction dated 31.08.2015 passed by learned

Additional Sessions Judge, Dibrugarh in Sessions Case No. 189/2008 convicting the accused under Sections 302/448 IPC does not call for any interference. Accordingly, the appeal stands dismissed.

23) We appreciate the help rendered by both, the learned amicus curiae as well as the Additional Public Prosecutor for the State in adjudicating the matter. The State Legal Service Authority, Assam, Guwahati shall pay remuneration of Rs. 7,500/- to Md. Zahangir Hussain, learned amicus curiae of the case.

24) Registry shall return the LCR to the Court of Additional Sessions Judge, Dibrugarh, with a copy of this order. Registry shall also furnish a copy of this order to the accused appellant Satyajit Gogoi (Baruah) @ Dow Baruah through the Superintendent, Central Jail, Dibrugarh.

JUDGE

JUDGE

Comparing Assistant