

GAHC010211872019



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

Case No. : CRL.A(J)/54/2019

DEBARU MAJHI @ SAMRA TANTI
S/O. LT. KANDA MAJHI, VILL. 2 NO. BORBIL GAON, P.S. DIGBOI, DIST.
TINSUKIA, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. B BHAGAWATI, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE MIR ALFAZ ALI

JUDGMENT

Date : 05-03-2021

JUDGMENT & ORDER

M.A. Ali, J.

Heard Mr. B. Bhagawati, learned Amicus Curiae for the appellant and Mr. M. Phukan, learned

Addl. P.P., Assam for the respondent State.

2. This appeal is directed against the judgment and order dated 24.03.2011 rendered by the learned Addl. Sessions Judge, Tinsukia, whereby, the appellant was convicted under Section 302 IPC and sentenced to rigorous imprisonment for life and fine of Rs. 5000/- with default clause.

3. The case of the prosecution, in brief, was that at about 3 AM on 07.11.2014, a fight took place between the deceased Anil Bora and accused Debaru Majhi @ Samra Tanti, both of whom were employees of Shambu Shil. The appellant Samra Tanti inflicted injuries on the head of the deceased with an iron rod, which caused his death. An FIR was lodged by the employer of the deceased as well as the accused/appellant, which was registered by police as Margherita P.S. Case No. 172/2006 under Section 302 IPC and eventually submitted charge sheet against the appellant upon completion of the investigation.

4. During trial, learned Sessions Judge framed charge against the appellants under Section 302 IPC, to which, the appellant pleaded not guilty. In order to substantiate the charges, prosecution examined 8 witnesses including the doctor and the investigating officer. During examination under Section 313 CrPC, the appellant pleaded innocence.

5. PW-1, the doctor, who conducted the autopsy, found the following injuries –

“(i) One lacerated wound on left side of frontal region with fracture of underlying bone and injury to the brain of size 2.7 cm x 2 cm produced by blunt force impact.

(ii) One lacerated wound on the left temporal region with underlying fracture of temporal bone and injury to the brain of size 5cm x 2 cm produced by blunt force impact.

(iii) One lacerated wound on the left parietal region with underlying fracture of bone and injury to the brain of size of 4 cm x 2 cm produced by blunt force impact. Both upper eye-lids are swollen and bluish in colour.

(iv) The right thumb is crushed on the distal falanx only dorsal portion of skin is intact. The injury is produced by blunt force impact.

(v) An area of abrasion on the upper left quadrant of abdomen with bluish discoloration of the skin of size 7cm x 3 cm produced by blunt force impact. Underlying

spleen is found ruptured.

(vi) A lacerated wound on the medical border of right foot involving the skin and underlying muscles of size 10cm x 5 cm produced by blunt force impact.”

According to the doctor, the cause of death was shock and hemorrhage as a result of the injuries sustained. All the injuries were antemortem and homicidal in nature.

6. The informant, Sambhu Shil has been examined as PW-3, who testified, that the appellant and the deceased were employees in his shop. At about 2/2.30 AM at night, the Pandit of the Sikh Temple situated in front of his hotel, informed him over phone that a quarrel was going on in his hotel and asked him to come to the hotel. Immediately he came and found his employee Anil Bora lying dead. He also found the accused Samra Tanti at the place of occurrence. According to him, quarrel took place between Anil Bora (deceased) and the accused/appellant (Samra Tanti).

7. PW-4, Ram Bahadur Chetry, the lone eye witness to the occurrence, was also an employee of the PW-3, Sambhu Shil. He deposed that at about 2 AM, he woke up from sleep hearing ‘ *halla* ’ in the hotel and noticed that the accused Samra Tanti was assaulting the deceased Anil Bora with an iron rod. Though, he tried to restrain the appellant, he also attempted to assault him and therefore PW-4 had fled away out of fear. He also stated to have noticed injury on the head of the deceased. During cross examination, it was elicited that the deceased used to insult the accused.

8. PW-5 & PW-6 were post-occurrence witnesses and according to them, they came to know about the occurrence on the next morning.

9. PW-2 was the Judicial Magistrate, who recorded the confessional statement of the appellant, which has been proved as Ext.2. The PW-2, the Judicial Magistrate, stated elaborately the procedure as to how the confessional statement was recorded. She also stated that having been satisfied that the accused was willing to make the confession voluntarily, she recorded the confession of the appellant. Though, this witness was subjected to cross examination, nothing material could be elicited to punch any hole in the confessional statement recorded by her. In the confessional statement recorded by PW-2, the

appellant stated as under:

“I came to Margherita about a month ago in search of a job and started working in a hotel in Margherita Market (situated on the bank of the river). About 15 days ago I had a quarrel with Anil, a boy working in the same hotel and he punched me. Thereafter, sometimes I had quarrel with him. At around 3 am on 7.11.2006, a quarrel took place between Anil and me over a small matter. At that time we were drinking liquor. When Anil pushed me, I hit on his head with an Iron mortar stick, and then he fell on the ground and died. Before falling down on the ground when he threw that iron stick, I got hurt on my back.”

10. PW-7 was the Investigating Officer, whose testimony was more or less formal and confined to the various steps taken by him during investigation.

11. Taking note of the above evidence, more particularly, the oral testimony of PW-4 and the confessional statement of the accused/appellant, learned trial court convicted the appellant under section 302 IPC and awarded sentence as indicated above.

12. The learned amicus curiae has not contested the finding of the learned trial court, that the deceased died due to the injury inflicted by the appellant. However, the contention of the learned amicus curiae is that there was no premeditation on the part of the appellant and he inflicted the injury at the heat of passion in course of quarrel and as such, the conviction of the appellant ought not to have been recorded under Section 302 IPC. On the basis of the evidence brought on record, at best, a conviction under Section 304 Part-II could have been recorded, submits learned amicus curiae.

13. Learned Addl. P.P, Mr. M. Phukan, also very fairly submits that it is not a case of murder, rather a case of culpable homicide not amounting to murder and as such, a lesser punishment can be inflicted under Section 304 Part-I IPC for culpable homicide not amounting to murder.

14. Admittedly, the appellant, the deceased and the PW-4 were employees in the hotel of PW-3, Sambhu Shil and all of them were together in the hotel on the night of the occurrence. According to the PW-4, the lone eye witness, he woke up hearing ‘halla’ and found the appellant hitting the deceased with a rod. According to PW-3, he was informed by the Pandit of the Sikh Temple situated in the

proximity of his shop, that there was a quarrel in his shop and requested him to come immediately. In the confessional statement, the accused/appellant stated that a quarrel ensued between him and the deceased on small matter and in course of such quarrel, the deceased punched him. When the deceased pushed him down, he assaulted the victim with an iron stick at the heat of passion. He also stated in his confessional statement that both were drunk at the time of the occurrence. Thus, the confessional statement of the accused/appellant, which was duly recorded by the Judicial Magistrate (PW-2) also lends support to the eye witness's accounts of (PW-4) as well as the testimony of the PW-3 and the averment made in the FIR that the incidence of assault took place in course of quarrel and mutual fight. There is nothing in the record to suspect the voluntariness of the confession made by the accused and the truthfulness of the confession is also reinforced by the oral testimony of the PW-3 & PW-4. Thus, the oral testimony of the PW-4 & PW-3, coupled with the confessional statement of the accused makes it abundantly clear, that there was quarrel and fight between the appellant and the deceased and in course of the quarrel, the appellant hit the deceased with the iron rod at the heat of passion. Thus, the entirety of the evidence clearly demonstrates that there was no premeditation on the part of the appellant and the assault was made suddenly at the heat of passion in course of quarrel.

15. Evidently, the appellant assaulted the victim with an iron rod, which is normally available in any house. The evidence, more particularly, the weapon used by the accused and the nature of injury does not suggest that the appellant acted in cruelty or took any undue advantage. Therefore, when the assault was made without premeditation, at the heat of passion in course of sudden quarrel and the appellant also did not take any undue advantage nor acted in cruelty, the present case squarely comes within the sweep of exception (4) to Section 300 IPC. However, having regard to the three injuries on the head and the weapon used, it cannot be said that the appellant did not have intention to cause death or to cause such bodily injury as is likely to cause death. Thus, taking note of the evidence in its entirety, we are of the considered opinion that the conviction of the appellant under Section 302 IPC is not sustainable. Therefore, we set aside the conviction of the appellant under Section 302 IPC, instead, convict him under Section 304 Part-I IPC. It appears from the record that the appellant has been in custody for more than 14 years. Therefore, in our considered view, the period, which the appellant has already undergone in custody during investigation and trial, shall meet the ends of justice. Accordingly, we sentenced the appellant to imprisonment for the period already undergone. The appellant shall be released from the jail forthwith, if not required in any other case.

16. With the modification in the conviction and sentence as indicated above, the appeal stands partly allowed and disposed of.

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

18. Send down the LCR.

JUDGE

JUDGE

Comparing Assistant