



GAHC010203182018

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

Crl. A (J). No. 78 of 2018

Shri Tilok Bordoloi
S/O Sadhiram Bordoloi
Vill. Dighaliati,
P.S. Juria, Assam

.....Accused/appellant.

- Versus -

The State of Assam

.....Respondent.

Advocates for the Appellant : Z. Hussain, Amicus Curiae

Advocate for the Respondent : B.B. Gogoi, (Addl. Public Prosecutor, Assam)



BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR
JUDGMENT & ORDER
(ORAL)

18.02.2021

Heard Mr. Z. Hussain, learned Amicus Curiae appearing for the appellant. Also heard Mr. B.B. Gogoi, learned counsel for the State/respondent.

2. This jail appeal is preferred against the judgment and order, dated 24.07.2018, passed by the learned Addl. Sessions Judge, Nagaon in Sessions Case No. 40/2017, whereby the accused-appellant is convicted under Section 304 Part-I and sentenced to suffer RI for 10 years and to pay a fine of Rs. 1000/- in default to undergo RI for 2 months.

3. The prosecution case, precisely, is that an FIR was lodged by the husband of the deceased (P.W.-1), with the Officer-in-charge of Juria P.S. on 03.08.2014 alleging, *inter alia*, that on that day at about 6.30 P.M, his son, the accused Tilak Bordoloi picked up a quarrel with his mother namely, Birola Bordoloi and as soon as she entered into the house, the accused went inside and killed her by stabbing with a *Kuchia Sel*.

4. Based on the above FIR, Juria P.S. Case No. 286/2014 under Section 302 of the IPC was registered and after completion of investigation, the investigating officer, SI Tilak Baruah, laid a charge-sheet under Section 302 of the IPC against the accused showing him absconder. The learned Chief Judicial Magistrate, Nagaon by an order, dated 29.05.2017, committed the case to the Court of learned Sessions Judge, Nagaon for trial. On receipt of the case, Sessions Case No. 40(N)/2017 was registered and the learned Sessions Judge handed over the case to the Court of learned Addl. Sessions Judge No. 1 for disposal.

5. After perusal of the case diary and hearing the learned counsel for both the sides, the learned Addl. Sessions Judge No.1, Nagaon framed a charge under Section 302 of the IPC against the accused. The accused pleaded innocent and claimed to be tried. In order to bring home the charge, the prosecution examined as many as 9(nine) witnesses including the autopsy surgeon while the defence cross-examined them. After closing the evidence of the prosecution side, the statement of the accused was recorded under Section 313 Cr.P.C. The accused reiterated his innocence and declined to examine any witness in defence. Thereafter, on hearing the arguments advanced by the learned counsels for both the sides and consideration of the materials on the case records, the learned Addl.

Sessions Judge, No. 1 Nagaon convicted and sentenced the accused, as stated above.

6. Mr. Z. Hussain, learned Amicus curiae appearing for the accused, submits that the judgment of the learned trial court suffers from material infirmity while appreciating the inconsistent evidence adduced by the prosecution side. Mr. Hussain further submits that the alleged incident occurred at the house of the deceased itself which is located at a place surrounded by many houses but not a single eye witness has so far been examined in the case to bring the whole truth on record. Mr. Hussain also submits that the husband of the deceased namely, Sadhiram Bordoloi (P.W.-1) did not support the case of the prosecution and as such, he was declared a hostile witness. Mr. Hussain, the learned Amicus Curiae for the accused, submits that the prosecution failed to prove its case beyond all reasonable doubt and as such, the accused is entitled to be acquitted of the charge.

7. Mr. B.B. Gogoi, learned Addl. PP appearing for the State/respondent submits that a perusal of the reasons recorded by the learned trial Court in the impugned judgment in support of the conviction of the accused in the backdrop of the evidence that was adduced by the prosecution side in the case stood proved beyond any doubt. Mr. Gogoi, therefore, submits that the judgment and order of conviction recorded by the learned trial Court do not warrant any interference.

8. For a proper appreciation of evidence, this Court finds it apposite to look to Sections 299 and 300 of the IPC, which are quoted hereunder.

“299. Culpable homicide.- Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide”.

“300. Murder: Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

Secondly.- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly.- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly.- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

9. Now, let us appreciate the evidence on record.

10. P.W.-1, Sadhiram Bordoloi, the informant and the husband of the deceased, was not an eye witness to the alleged occurrence and he, *inter alia*, stated that at the time of the alleged occurrence

he went to his neighbour's house, namely, Kuddus Bordoloi, who is of course not examined in the case. In his cross-examination, he stated that he suspected that his son had killed his wife, Birola Bordoloi and then he fled away from the house before he arrived at the place of occurrence hearing hue and cry at his home.

11. The evidence of P.W.-2, Shri Punaram Bordoloi, a neighbor, is that he did not witness the alleged occurrence. He, *interalia*, stated that the family members of the accused had frequent quarrels among themselves and they are habituated to consumption of alcohol. He stated that at the time of the occurrence, he was lying on bed as he was suffering from fever, but after hearing *hullah*, he came out of house. He saw Birola Bordoloi (the deceased) lying dead at her courtyard and heard from the gathered people that the son of the deceased had killed his mother.

12. P.W.-3, Dipeswar Bordoloi, who hails from the same locality, stated that at the time of occurrence, he was at his house and hearing hue and cry, he stepped out of house and in the meantime, police arrived. He did not go to see the dead body.

13. P.W.-4, Sanjib Bordoloi was declared as a hostile witness by the prosecution. He stated that the dead body of the deceased, Birola Bordoloi was lying at their courtyard bearing some injuries on her chest.

14. P.W.-5, Dharambir Bordoloi, who also hails from the same locality of the accused, was declared as a hostile witness by the prosecution. He stated that the police obtained his signature on a seizure memo vide Ext-2. He didn't witness the alleged occurrence.

15. P.W.-6, Ajay Bordoloi, who is a neighbour of the accused and a distant relative, was declared as a hostile witness by the prosecution. From his evidence, it transpires that accused and the deceased had lived separately but with a common courtyard and he noticed that the dead body of Birola Bordoloi lying at their courtyard and the people, who gathered at the place of occurrence, on his enquiry, stated that they did not know who killed the deceased.

16. P.W.-8, Mohan Bordoloi also did not witness the alleged occurrence and his evidence appears to be hearsay.

17. P.W.-9, SI Rup Jyoti Dutta is the investigating officer and he deposed on the formal aspects of the investigation into the case.

18. C.W.-1, Samiran Bordoloi, the brother of the accused, in his examination-in-chief supported the case of the prosecution, but in cross-examination, he contradicted the same by stating that he did not see how his mother was killed and by whom.

19. A perusal of the cross-examination of P.W.-2 shows that there was no cordial relation between the deceased Birola Bordoloi and her husband and their family members were habituated to consumption of alcohol. From the above testimony of the prosecution witnesses, it is also evident that there was no eye witness to the alleged occurrence and even the prosecution witnesses, namely, P.Ws 1, 4, 5 and 6 were declared as hostile witnesses by the prosecution and as such, they did not support the case of the prosecution. Going through the evidence of P.W-7, Dr. Lakshman Prasad Sarma, the autopsy Surgeon, who conducted the post-mortem examination on the body of the deceased Birola Bordoloi, held the opinion that the cause of death of the deceased was due to shock and haemorrhage as a result of sustaining of stabbed injuries on her person vide Ext-3, the post mortem report.

20. On consideration of the evidence of the prosecution including C.W-1, this Court finds absolutely no consistency in evidence attributing the culpable homicidal act of the accused on his mother, the deceased, Birola Bordoloi, beyond doubt. The accused allegedly had an altercation on the day of the occurrence and then he left for Morigaon accompanied by his wife, but the accused did not examine any witness in support of his plea of alibi. Therefore, the plea of alibi of the accused is found not proved in the case.

21. Considered thus, this Court is of the opinion that there is merit in the instant appeal and therefore, **the appeal stands allowed** and accordingly, the accused-appellant is acquitted of the offence and set at liberty forthwith setting aside the impugned judgment of his conviction and sentence.

22. Release the accused from jail custody forthwith.

23. The appeal stands disposed off.

Send back the LCR.

Before parting with the record, we appreciate the valuable service rendered by Mr. Z. Hussain, learned Amicus Curiae. Accordingly, it is directed that an amount of Rs. 7500/- as legal fees be paid to him by the High Court Legal Services Committee upon production of a copy of his judgment and order.

JUDGE

Comparing Assistant