



GAHC010117022019

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

Case No. : CRL.A(J)/35/2019

BADAN SOREN
KOKRAJHAR.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. AZAD AHMED, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR. JUSTICE SUMAN SHYAM
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

Date of hearing : 02.12.2022.

Date of judgment : 02.12.2022.

JUDGMENT & ORDER (Oral)

(Suman Shyam, J)

Heard Mr. A. Ahmed, learned Amicus Curiae appearing for the appellant. Also heard Ms. B. Bhuyan, learned senior counsel (Addl. P.P., Assam) assisted by Mr. J. Das,



Advocate appearing for the State/respondent No.1. None has appeared for the informant/respondent No.2.

2. Being aggrieved by the judgment dated 18.01.2019 passed by the learned Sessions Judge, Kokrajhar in connection with Sessions Case No.150/2016 convicting the appellant under Section 302 of the Indian Penal Code (IPC) for committing the murder of his father and sentencing him to undergo rigorous imprisonment for life and also to pay fine of Rs.30,000/-, the instant appeal has been preferred from the Jail.

3. The prosecution case, in a nutshell, is to the effect that on 14.06.2016, at about 9:00 p.m., the accused/appellant Sri Badan Soren, who was out somewhere and returned home, he struck his father Maikel Soren on the head with a 'lathi' (stick) causing grievous injury on his head leading to his death. The accused had also hit his mother with the 'lathi' causing injury on her body.

4. On 16.06.2016 the mother of the accused and the wife of the deceased viz. Smti. Sita Hembram lodged an ejahar before the Officer-in-Charge of Serfanguri Police Station reporting the incident. However, it appears that immediately after the occurrence, i.e. on 15.06.2016 itself, the appellant had surrendered at the Police Station. On the basis of such input received from the appellant, Serfanguri P.S. GD Entry No.268 dated 15.06.2016 was made. Thereafter, on receipt of the ejahar dated 16.06.2016, SFS P.S. Case No.41/2016 was registered against the accused under Section 302 of the IPC and the matter was taken up for investigation by the police. On completion of investigation, the Police had submitted charge-sheet against the accused/ appellant under Section 302 of the IPC. Based on the charge-sheet



submitted by the Police, the learned trial court had framed charge against the accused under Section 302 of the IPC. The charge so framed was read over and explained to the accused. However, since the accused had pleaded innocence, the matter went up for trial.

5. During trial, the prosecution side had examined as many as six witnesses including the informant Smti. Sita Hembram (PW-2), the doctor who had conducted the post-mortem examination viz., Dr. Nihar Ranjan Biswas (PW-1) and the two I.Os. who had conducted investigation and submitted charge-sheet i.e. PWs-5 and 6 respectively. On completion of recording of evidence of the prosecution side, the statement of the accused was recorded under Section 313 Cr.P.C. wherein, he had denied all the incriminating circumstances put to him. As a matter of fact, in reply to the question No.7, the accused had not only pleaded innocence but had also taken the plea of alibi by stating that at the time of the occurrence he was not present at home but had gone to Janagaon to watch a football match and stayed in the house of his friend Sakla Mardi after having dinner. The defence side, however, did not adduce any evidence. On completion of trial, the learned court below has held that the charge brought against the accused/appellant under Section 302 of the IPC stood established beyond reasonable doubt. Accordingly, the accused was convicted and sentenced as aforesaid.

6. By referring to the materials on record, Mr. Ahmed, learned *Amicus Curiae* has argued that there is evidence to show that the victim had fallen down on the ground after being struck by the appellant. The medical report does not clearly establish as

to which of the injuries sustained by the victim was on being struck by the appellant and which was caused due to falling on the floor. Since there is possibility of the deceased sustaining injury due to falling down on the floor, hence, it is doubtful as to whether the victim had died due to injuries caused by the appellant. It is also the submission of Mr. Ahmed that there is evidence to show that the occurrence was preceded by a quarrel and in all probability the appellant was in an inebriated state. Under the circumstances, submits Mr. Ahmed, this case would come within the sweep of the 4th Exception to Section 300 of the IPC. On such count, Mr. Ahmed has prayed for conversion of the conviction of the appellant in the event the court finds this is not a fit case for acquittal. The learned *Amicus Curiae* has also tried to impress upon this Court to award lesser sentence on the appellant by urging that at the time of the occurrence, the age of the appellant was around 20 years and therefore, keeping his future in mind, the court may take a lenient approach towards the appellant.

7. Responding to the above, Ms. Bhuyan, learned Addl. P.P., Assam has argued that the prosecution case stands firmly established from the testimony of the informant i.e. the mother of the appellant and the wife of the victim viz. PW-2, who had seen the occurrence. She had categorically deposed as to the manner in which the appellant had struck his father (the victim) on his head with a 'lathi' causing multiple injuries. The medical evidence clearly establishes the fact that the victim had died a homicidal death due to the injuries suffered on the head. Since the appellant had struck his father on the vital parts of the body, more than once, causing grievous injuries leading to his death, according to the learned Addl. P.P., there is no scope to

hold that the appellant was not responsible for the death of his father. Ms. Bhuyan has, however, submitted in her usual fairness that it could be a case where there was no pre-meditation and in such an event, this Court may consider the submission of the appellant's counsel to award a lesser sentence to the appellant.

8. We have considered the submissions made by the learned counsel for both the sides and have meticulously examined the materials available on record.

9. From the evidence of PW-1 i.e. Dr. Nihar Ranjan Biswas it has been firmly established that the victim had died a homicidal death due to the injuries suffered on his head. As per the medical evidence, the following injuries were found on the dead body :-

“Rigor mortis present in upper and lower limbs only. Split lacerated injury over the right side of forehead measuring 6” x ½” x scalp deep. Split lacerated injury over right temporal region measuring 3” x ½” scalp deep. Fracture bone. Blood clot seen frontal region of brain. A black bruise present over right shoulder joint. Abrasion on left knee joint. Abrasion over left leg over left ankle joint (Anterior) and no other injury seen.”

The doctor has opined that cause of death was instant shock due to head injury which was caused by blunt object and ante-mortem in nature. The PW-1 has also proved the post-mortem report Ext-1 by identifying his signature therein. Cross-examination of this witness was declined by the defence side.

10. PW-2, Sita Hembhrom is the informant in this case. She is the mother of the appellant and wife of the victim. PW-2 has deposed that just before the occurrence, the appellant/accused was involved in a quarrel with his father. It was the

appellant/accused who had killed her husband and he died instantly. PW-2 has confirmed that her statement was recorded by the Magistrate under Section 164 Cr.P.C. During her cross-examination, PW-2 has deposed that her son was jobless. The incident occurred at night in the month of June when she was at the verandah. She had asked the accused to earn. According to PW-2, the accused was in a state of intoxication at that time. The accused had also assaulted her. PW-2 has confirmed that she had lodged the ejahar on the next morning of the incident.

11. The testimony of PW-3, Gunja Tirki is not of much significance in this case as he did not see the occurrence. His evidence is merely of hearsay nature. Hence, we do not deem it necessary to deal with his testimony.

12. PW-4, Sri Mantu Rawani was the scribe of the ejahar. He has deposed before the court that he wrote the ejahar as per the instruction of the informant (PW-2). Ext-2 was the F.I.R. which bears his signature. In his cross-examination, PW-4 has stated that the informant had informed him that on the day of occurrence the deceased had scolded the accused and there was a quarrel between them. She had also told him that the deceased was in drunken condition at the time of the occurrence. However, he did not see the occurrence.

13. PW-5, Sri Binanda Basumatary was the Officer-in-Charge of Serfanguri Police Station on 15.06.2016. PW-5 has deposed that on that day, at around 8:30 a.m., a person disclosing his identity as Badan Soren (accused) surrendered before the Police Station by confessing that he had murdered his father. He made a GD Entry and thereafter, visited the place of occurrence and saw the dead body of the victim

lying on the ground with head injuries. PW-5 has stated that the wife of the deceased was also present at the place of occurrence. He had recorded the statements of the witnesses including the informant (PW-2), who had handed over the 'lathi' used in the occurrence. He had seized the 'lathi' vide Ext-4. The I.O. (PW-5) has further stated that as per version of the witnesses, it was the accused who had committed the murder of his father with the help of that 'lathi'. PW-5 has exhibited the GD Entry No.268 dated 15.06.2016 as Ext-3 as well as the seizure-list as Ext-4. He has also confirmed that inquest was made on the dead body and the same was sent for post-mortem examination. According to PW-5, he had recorded the statement of the accused under Section 161 Cr.P.C wherein he had confessed his guilt but the statement of the accused was not recorded under Section 164 Cr.P.C.

14. Sri Ram Chandra Rabha was the Officer-in-Charge of Serfanguri Police Station who had received the Case Diary from the PW-5, collected the post-mortem report and thereafter, submitted the charge-sheet (Ext-5) against the appellant. Cross-examination of this witness was declined.

15. Sri A. Saikia was the Judicial Magistrate 1st Class on duty at Kokrajhar on 16.06.2016 when the statement of PW-2 was recorded under Section 164 Cr.P.C. He was examined as CW-1. This witness has deposed as regards the manner in which the statement of PW-2 was recorded under Section 164 Cr.P.C and had also proved the statement as "Ext-X" by identifying his signature therein. According to CW-1, the witness had put her thumb impression on "Ext-X" in his presence. During his cross-examination, CW-1 has stated that when he tried to enquire as to why the accused

had killed his father, the witness had replied that she did not know the reason and that the accused was in a state of intoxication while committing the murder of his father.

16. From an analysis of the evidence available on record, it is firmly established from the testimony of PW-1 as well as the post-mortem report Ext-1 that the victim in this case had suffered a homicidal death due to the injuries sustained by him on the head. Therefore, the homicidal death of the victim is well established. The PW-2 i.e. the mother of the accused and the wife of the deceased is an eye-witness to the occurrence. She has categorically deposed that it was none other than the accused/appellant who had struck the victim on the head with a 'lathi'. The testimony of PW-2 is not only free from any contradiction but the same also finds due corroboration from her statement recorded under Section 164 Cr.P.C. marked as Ext-X.

17. We also find from the testimony of PW-5 that soon after the occurrence, the accused had surrendered before the Police Station and confessed that he had committed the murder of his father. However, no confessional statement of the accused was recorded under Section 164 Cr.P.C. In view of the provisions of Sections 25 and 26 of the Evidence Act the alleged confession made by the accused before the police cannot be proved against him. Therefore, the conviction of the accused/appellant has rightly not been based by the learned trial court on his alleged confession. However, in view of the evidence adduced by PW-2, who appears to be an injured eye-witness, we are left with no manner of doubt that it was

none other than the appellant, who had grievously injured his father by hitting him on the head with a 'lathi' leading to his death.

18. Having held as above, the only issue that would now survive for consideration of this Court is as to whether, this case would come within the sweep of any of the Exceptions of Section 300 of the IPC. Exception 4 of Section 300 reads as follows :-

“Exception 4.-- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken under advantage or acted in a cruel or unusual manner.”

19. From a careful analysis of the testimony of PW-2, we find that the accused/appellant was unemployed and he used to have frequent quarrels with his father on such count. Just before the occurrence, the accused was reminded of his unemployed status. It also appears that he was in an inebriated state. We also find from the materials available on record that at the time of the occurrence, the accused/appellant was aged about 20 years. When a young person of the age of the accused is reminded of his unemployed status time and again, that too in a humiliating fashion, it is possible that the same would enrage the accused, more so, if he is in a state of intoxication. This is exactly what appears to have happened in this case. On the persistent queries made by his parents pointing at his unemployment, the accused/ appellant appears to have felt insulted. Resultantly, he lost his temper and in a heat of passion, he had picked up a 'lathi' (stick) which was used to block the doors of his house and hit his father on his head which had lead to his instant death. The accused/appellant was so enraged that he did not even spare his mother

and dealt blows on her as well. What is, however, significant to note herein that immediately after the incident, the accused had gone to the Police Station and surrendered before the police. He did not act in a cruel or un-usual manner nor did he make any attempt to take undue advantage of the situation.

20. From the above chain of events, we are of the considered opinion that there was lack of premeditation on the part of the accused/appellant and he had acted in a heat of passion having lost his cool on being reminded by his parents about his state of unemployment, which undoubtedly would be a very sentimental issue for an unemployed boy of his age. Situated thus, we are of the view that although the appellant had the knowledge that by hitting his father on the head with a 'lathi' he could cause death to him, yet, it appears that there was no intention to kill. As such, we hold that this case would come under the sweep of Section 304 Part-II of the IPC.

21. Consequently, we set aside the conviction and sentence awarded by the learned trial court to the appellant under Section 302 of the IPC and convict him for committing offence under Section 304 Part-II of the IPC.

22. In so far as award of jail sentence of the appellant is concerned, we have taken note of the fact that he was barely 20 years old at the time of the occurrence and therefore, has a life to be lived ahead of him. Although the irresponsible act of the appellant which led to the death of his father cannot be condoned, yet, keeping in mind the overall facts and circumstances of the case as well as the future of the appellant, we award him the jail sentence of 9 (nine) years rigorous imprisonment. The period of sentence so awarded by this Court shall stand adjusted against the



period already undergone by the appellant during investigation, trial, if any, as well after his conviction.

23. In so far as the fine imposed by the learned trial court is concerned, the same would remain unaltered.

24. The appeal stands partly allowed.

Before parting with the record, we put on record our appreciation for the valuable services rendered by Mr. Azad Ahmed, learned *Amicus Curiae* and recommend that the Registry may make payment of appropriate remuneration to the learned *Amicus Curiae* as per the existing norms.

Registry to send back the LCR.

JUDGE

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant