

GAHC010097412020



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

Case No. : CRL.A(J)/56/2020

BADAL GOALA
HAILAKANDI, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MALASRI NANDI

For the appellant : Mr. A. Dhar Amicus Curiae

For the respondent : Ms. S. Jahan Additional PP,

Date of hearing & judgment : 09.02.2023

JUDGMENT AND ORDER (Oral)

(M. Zothankhuma, J)

Heard Mr. A. Dhar, learned Amicus Curiae appearing for the appellant,

while Ms. S. Jahan, learned Additional Public Prosecutor appears for the State.

2. This appeal has been filed against the judgment and order dated 27.09.2019 passed by the Sessions Judge, Hailakandi in Sessions Case No.69/2016 arising out of Lala P.S. Case No.145/2013, by which the appellant has been convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default rigorous imprisonment for 2 (two) months.

3. The prosecution case in brief is that PW-2, who is the son of the deceased submitted an FIR before the Bilaipur Police Out Post, Lala Police Station on 30.07.2013, stating that the appellant had waylaid his father in front of the appellant's house and had started hacking his father with a sharp *dao*. Hearing his screams, a lot of people arrived at the place of occurrence. The complainant thereafter took his father to Silchar Medical College and Hospital where his father died, while under treatment. Consequent to the FIR, Lala P.S. Case No.145/2013 was registered under Section 341/302 IPC. Charge-sheet was filed wherein a prima facie case was found against the appellant under Section 341/302 IPC. The learned Trial Court framed 2 (two) charges against the appellant under Section 341/302 IPC.

4. The appellant pleaded not guilty to the charges framed against him and the trial of the appellant started in the Sessions Court, Hailakandi. During the trial, 11 (eleven) prosecution witnesses were examined. Examination of the accused was done under Section 313 Cr.P.C., where the appellant denied all the

evidence adduced against him. Thereafter, the learned Trial Court came to a finding that the appellant was guilty of the charge under Section 302 IPC and accordingly convicted him under Section 302 IPC, vide the impugned judgment and order dated 27.09.2019. After giving the appellant five hours time for hearing on the sentence, the learned Trial Court sentenced the appellant to undergo rigorous imprisonment for life with a fine of Rs.5,000/-, in default rigorous imprisonment for two months.

5. The learned Amicus Curiae submits at the outset that there are 3 (three) eye witnesses to the crime, who have been examined by the Trial Court. The three eye witnesses are PW-2, who is the son of the deceased, PW-3, who is the wife of the deceased and PW-7, who is an independent eye witness. He submits that evidence of PW-9, who is a Doctor, who examined the dead body of the deceased is to the effect that the death of the deceased was caused due to hemorrhagic shock, following injuries which were recorded in the Post Mortem Report exhibited as Ext.3 and that the same had been caused by a heavy sharp cutting weapon. He submits that in view of the evidence of the eye witnesses, he has got nothing more to comment in this case.

6. Ms. S. Jahan, learned Additional Public Prosecutor, appearing for the State, submits that the fact that the complainant's father had been killed on being hit numerous times by a *dao* by the appellant and which has been corroborated by the evidence of the three eye witnesses, the guilt of the appellant under Section 302 IPC has been proved. She also submits that the evidence of the Doctor clearly shows that death had occurred due to the injuries sustained by the deceased, caused by a *dao*. Accordingly, the impugned judgment and order should not be interfered with.

7. We have heard the learned counsels for the parties.

8. The evidence of PW-2, who is the son of the deceased, clearly shows that the appellant had given the deceased consecutive *dao* blows on his head, right shoulder and face. Hearing his cry, neighbouring people had gathered in the place of occurrence. PW-2 had personally seen the occurrence and PW-2 in his cross-examination has also stated that he tried to save his father, but could not do so. That a scuffle had taken place between the appellant and PW-2, who was 12 years old at the time of occurrence. On considering the evidence given by PW-2, we find that the evidence of PW-2 had not been shaken in the cross-examination.

9. PW-3, who is the wife of the deceased stated that she saw the appellant inflict *dao* blows on her husband. When she went to resist the appellant, the appellant pushed and kicked her. PW-3 also stated that she gave birth to a girl child three days later. The evidence of PW-7, who is an independent eye witness, is to the effect that he was cultivating his paddy land when he saw the deceased fall to the ground and saw the appellant inflicting *dao* blows upon the deceased. The cross-examination of PW-3 & PW-7 also shows that their evidence was not shaken during cross-examination.

10. The evidence of PW-9 i.e. the Doctor, who examined the deceased is to the following effect :

“On examination, I found - a male dead body of average built, dark brown

complexion. Rigormortis present with closed eyes and mouth.

Injuries :-

(i) Cut injury over the head extending from the bolt of scalp of right side up to the fronto nasal angle with the forehead cutting across skin, bone and meninges and brain tissue exposing the brain measuring 15 x .5cm x brain depth,

(ii) Cut injury left angle of the mouth measuring 7 cm x bone depth x .5cm cutting across skin, bone, mandible and sub mandibular tissues and the right side of the neck superficially,

(iii) Cut injury over right shoulder just adjacent to the root of the neck cutting across shoulder muscles, pleura and entering in the chest cavity measuring 16x0.5xchest depth,

(iv) Cut injury over right side of upper back cutting across skin, muscles measuring 5 x0.5cmx muscle depth.

In my opinion, the death was due to haemorrhagic shock following injuries as described which were ante mortem and caused by heavy sharp cutting weapon and was homicidal in nature. Time since death is given as 12/24 hours approximately.

Ext. 3 is the post mortem report and Exts. 3(1) and 3(2) are my signature."

11. The evidence given by the Doctor, PW-9 clearly corroborates the evidence of the eye witnesses, which is to the effect that the deceased had suffered injuries due to a sharp cutting weapon and which was the cause of death of the deceased.

12. The *dao* which was used by the appellant was also seized by the police and the same was exhibited as Ext.7 during the trial.

13. The examination of the appellant under Section 313 Cr.P.C. shows that the appellant has given a blanket denial to all the questions put to him.

14. In the case of ***Rajkumar vs. State of M.P.***, reported in ***(2014) 5 SCC 353***, the Apex Court has held that in the event of complete denial/silence in respect of questions put to an accused under Section 313 Cr.P.C., the Court would be entitled to draw an inference, including an adverse inference against the accused. In the present case, the eye witnesses having clearly proved the fact that they had seen the crime committed by the appellant before their very eyes, we do not find any ground to interfere with the impugned judgment and order dated 27.09.2019 passed by the learned Sessions Judge, Hailakandi in Sessions Case No.69/2016.

15. The appeal is accordingly dismissed.

16. In appreciation of the assistance provided by the learned Amicus Curiae, his fee is fixed at Rs.8,500/-, which should be paid by the State Legal Services Authority.

Send back the LCR.

JUDGE

JUDGE

Comparing Assistant