

GAHC010160522020



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

Case No. : CRL.A(J)/85/2020

ANI RAM PANGING
SIVASAGAR, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. K GOSWAMI, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGMENT AND ORDER

Date : 21-08-2023

(M. Zothankhuma, J)

Heard Mr. K. Goswami, learned Senior Counsel and Amicus Curiae, appearing for the appellant (in jail) as well as Ms. S. Jahan, learned Addl. P.P., Assam appearing for the State respondent.

2. This appeal has been filed against the judgment dated 21.12.2019, passed by the Court of learned Additional Sessions Judge, Sivasagar, in Sessions Case No.74(S-S)/2018, whereby the appellant has been convicted under Section 302 of the IPC and sentenced to undergo rigorous imprisonment for life with a fine of fine of Rs.2,000/- (Rupees two thousand), in default, simple imprisonment for one month.

3. The prosecution case in brief is that the uncle of the deceased Hemo Saikia, who is PW.2, submitted an FIR dated 07.12.2017, before the Officer-in-Charge of the Sivasagar to the effect that at around 9:00 P.M., on 06.12.2017, his nephew was found dead with multiple injuries at Dighal Dariali Missing Gaon, under the jurisdiction of Disangmukh Police Outpost. In pursuant to the FIR, Sivasagar P.S. Case No.1025/17 under Section 302 IPC dated 07.12.2017 was registered.

4. After completion of the investigation, the Investigating Officer (I.O.) submitted a charge sheet, on finding a prima facie case under Section 302 IPC, against the appellant.

5. The learned Trial Court thereafter framed the charge under Section 302 IPC against the appellant for the murder of the nephew of PW.2, to which the appellant denied the charge and claimed to be tried.

6. The learned Trial Court, thereafter examined 8 prosecution witnesses and after examination of the appellant under Section 313 of CrPC, came to a finding that the appellant was guilty of having committed the murder of the deceased person. The appellant was thereafter convicted under Section 302 IPC and sentenced accordingly, as stated in the earlier paragraph.

7. Mr. K. Goswami, learned Amicus Curiae submits that PW.6 was an eyewitness to the act

of the appellant beating the deceased with a bamboo. Further, the evidence of PW.3, 4, 5 & 7 corroborated the evidence given by PW.6. He also submits that the statements made by the prosecution witnesses Nos.3—7, under Section 161 CrPC and Section 164 CrPC, is in the same vein as the testimonies given by them before the learned Trial Court. He further submits that the evidence of PW.2 is to the effect that the PW.2 had noticed four stab injuries on the backside of the head of the deceased with bleeding from the ear, nose and head of the deceased. The evidence of the Doctor (PW.1) also corroborated the fact that the deceased had died as a result of the injuries inflicted upon him and as such, it was proved that the deceased had died due to the act of the appellant. However, there is nothing to show that there was any motive on the part of the appellant to kill the deceased or that there was any enmity between the parties. On the contrary, the evidence of the prosecution witnesses shows that the appellant and the deceased were friends and used to occasionally drink together. Further the deceased used to occasionally stay in the house of the appellant. As such, the action of the appellant could not have been done with the intention of killing the deceased. Accordingly, the offence of murder may not be attracted to the facts of the case.

8. Ms. S. Jahan, learned Addl. P.P., Assam submits that the evidence recorded by the learned Trial Court clearly points to the fact that the death of the deceased was due to the act of the appellant in hitting the deceased with the bamboo and the dao. Ms. Jahan further submits that the evidence of the PW.6 shows that PW.6 had seen the appellant with the bamboo and a dao. PW.6 has seen the appellant hitting the deceased. Further, the voice identification of the appellant by PW.5 and PW.7, at the time of the incident clearly proved the guilt of the appellant. She thus submits that there being no ground to interfere with the judgment of the learned Trial Court, the appeal should be dismissed.

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

10. The evidence of PW.1 is to the effect that he was working at Sivasagar Civil Hospital as a Doctor and he conducted the post mortem examination on the body of the deceased. As per his evidence, PW.1 states that rigor mortis had set in on the dead body and there were abrasions on the nose and face of the deceased. There were five numbers of incised wounds on the posterior part of the scalp of the deceased. There was also fracture of the scalp posterior, scalp and occipital area, besides bleeding. There was bleeding inside the mid brain and posterior brain lobes. All the injuries were ante mortem in nature. In the opinion of the PW.1, the cause of death was due to coma, as a result of injury to the brain of the deceased. In his cross-examination, PW.1 states that the weapon by which the injuries were inflicted was a sharp weapon.

11. The deposition of PW.2, who is the informant and uncle of the deceased is to the effect that on being informed that the body of his nephew was lying by the side of the road, he went to the place of occurrence and saw the deceased. He also saw that the appellant was in handcuff inside a vehicle. PW.2 noticed four stab injuries on the backside of the head of the deceased with bleeding from his ear, nose and head. He stated that he lodged the FIR. PW.2 also stated that the deceased used to loiter around the village with various people and consumed liquor. Sometimes the deceased did not return home for two/three days and sometimes stayed with the accused/appellant.

12. The evidence of PW.3 is to the effect that he knew both the appellant and the deceased. On the date of incident, the son of the appellant told him that his father had killed the deceased. PW.3 thereafter went to the place of occurrence and also informed the police

about the matter. He also stated that he saw the dead body lying with his face down and there were injury marks on the backside of his head.

13. The evidence of PW.4 is to the effect that he had come back home from work on 06.12.2017, at about 6:30 P.M. As soon as he entered his house, he saw his father going out with an object in his hand, which he could not properly identify as it was dark. After about 25 minutes, his father returned back home and went to bed. Five minutes later he received a phone call from Malesh Mili (PW.5) who informed him that his father had killed the deceased. PW.4 states that he thereafter went out of his house and saw the dead body of the deceased with head injuries. The police arrived and took the dead body.

14. The evidence of PW.5 is to the effect that the incident took place about 13/14 meters away from his house. While he was at home, at about 6:30 P.M. on 06.12.2017, he heard the voice of the appellant outside. He went out of his house after some moment and saw that his neighbours had already gathered there. He saw the dead body of the deceased lying by the side of the road with head injuries and bleeding from his head. The police arrived and took away the dead body. During his cross-examination, the PW.5 stated that as he was inside his house, he could not see whom the appellant was talking to. He also stated that the voice which he heard from the place of occurrence was similar to the voice of the appellant.

15. The evidence of PW.6 is to the effect that the deceased was known to him and the appellant was his neighbour. While returning home from the market on 06.12.2017, at about 8:30 P.M., PW.6 saw the appellant beating the deceased and telling him to go away immediately. The appellant was having a bamboo stick and a dao in his hand, while the deceased was lying on the ground. PW.6 then went into his house and informed the matter to

PW.5, PW.7 and Poran Panging. About two minutes later, PW.6, PW.7 and Poran Panging went to the place of occurrence and found the dead body of the deceased. PW.6 then informed the son of the appellant Ghanashyam Panging about the incident and told him that his father had killed the deceased. Ghanashyam Panging informed the police. The police arrived and took the body away and then went to the house of the appellant.

In his cross-examination, PW.6 stated that he saw the appellant beating the deceased with the bamboo from a distance of about 100 meters. PW.6 also stated that he heard the appellant asking the deceased to leave the place.

16. The evidence of PW.7 is to the effect that he knew PW.2, i.e. the informant and the appellant. On 06.12.2017, at about 8:45 P.M., while PW.7 was sitting with Poram Panging and PW.5 in the courtyard of Poram Panging, they heard appellant shouting "jaa, jaa" (go, go). They went to the place of occurrence and found the dead body of the deceased. The appellant was not there when they reached the place of occurrence. The VDP Secretary was informed of the incident, who thereafter informed the police.

17. The evidence of PW.8, who is the Investing Officer (I.O.), is to the effect that while he was working as the in-charge of the Disangmukh Outpost, he received a call from the VDP Secretary, at about 9:00 P.M. on 06.12.2017, informing him that one male body was seen lying near Namghar. He went to the place of occurrence and found the dead body. Thereafter he recorded the statements of the witnesses and informed the Sivasagar Police Station. They then went and apprehended the appellant. The inquest of the dead body was done in the police station and post mortem examination was also done in the hospital. A sketch map of the place of occurrence was made and the statement of the informant was recorded. The FIR

was lodged on 07.12.2017 and the remaining part of the investigation was done by SI Prabhat Rajkhowa. The statement of the witnesses were recorded under Section 164 CrPC and on completion of investigation, the new I.O. submitted the charge sheet against the appellant under Section 302 IPC.

18. In the examination of the appellant under Section 313 CrPC, the appellant has denied having killed the deceased.

19. As can be seen from the evidence of PW-6, the eyewitness to the incident saw the appellant beating the deceased. There were four stab injuries on the back side of the head of the deceased as per the evidence of PW-2. Thus, it was proved that the appellant had caused the death of the deceased. PW-6 had also seen the appellant holding a dao (sharp edged long blade). In the case of ***Dola vs. State of Odisha***, reported in ***AIR 2018 SC 4020***, the Apex Court has held that there cannot be any dispute that when persons are known to each other, a person can certainly identify the other person by voice. In the present case, Prosecution Witness Nos. 5 and 7 have stated in their evidence that they knew the appellant and that they had heard his voice at the place of occurrence. PW-7 in fact had heard the appellant telling the deceased "go, go". In view of the judgment of the Apex Court, as referred to above, the fact that the appellant was seen as the perpetrator of the crime by the eye witness (PW-6) has been clearly corroborated by the voice recognition of the appellant by PW-5 and PW-7.

20. The statements made by PW-3 to PW-7 under Section 161 CrPC and under Section 164 CrPC vis-à-vis their testimony given before the Court, show that there is no discrepancy, besides pointing to the guilt of the appellant in killing the deceased. The evidence of PW-2

shows that there were four stab injuries on the back side of the head of the deceased and the said injuries were inflicted by a sharp weapon. Keeping in view the four cut injuries inflicted on the vital part of the body of the deceased, we are of the view that there is nothing to attract the Exceptions to Section 300 IPC in the present case.

21. In view of the reasons stated above, we are of the view that the prosecution has been able to prove the guilt of the appellant in committing the offence of murder beyond all reasonable doubt. Accordingly, we do not find any ground to interfere with the impugned judgment of the learned Trial Court. The appeal is accordingly dismissed. Send back the LCR.

22. In appreciation of the assistance provided by the learned Amicus Curiae, the appropriate fee payable to him should be paid by the State Legal Services Authority.

JUDGE

JUDGE

Comparing Assistant