

GAHC010190282020



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

Case No. : CRL.A(J)/97/2020

Bashi Ram Boro
Goalpara, Assam.

.....Appellant

Versus

The State of Assam,
Represented by the PP, Assam

.....Respondent

BEFORE

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

For the appellant : Mr. B. Bhagawati, Amicus Curiae

For the State respondent : Ms. B Bhuyan,
Addl. Public Prosecutor, Assam.

Date of hearing & judgment : 21.07.2023

JUDGMENT AND ORDER (ORAL)

(M. Zothankhuma, Judge)

Heard Mr. B. Bhagawati, learned Amicus Curiae appearing for the appellant. Also heard Ms. B Bhuyan, learned Additional Public Prosecutor, appearing for the State respondent.

2. This appeal has been preferred against the judgment dated 03.03.2020, passed by the court of the learned Sessions Judge, Goalpara in Sessions Case No. 74/2018, by which the appellant has been convicted under Section 447/324/307/302 IPC and sentenced to undergo simple imprisonment for 1 (one) month under Section 447 IPC. He has been sentenced to suffer simple imprisonment for one year under Section 324 IPC. He has been further sentenced to suffer simple imprisonment for 10 (ten) years with a fine of Rs. 3,000/-, in default simple imprisonment for 6 (six) months under Section 307 IPC. The appellant has been further sentenced to suffer rigorous imprisonment for life with a fine of Rs.7,000/-, in default to suffer simple imprisonment for six months under Section 302 IPC. All the sentences are to run concurrently.

3. The prosecution case in brief is that an FIR dated 17.10.2017 was submitted by the informant/Prosecution Witness-1 (PW-1), to the effect that his uncle (PW-11) and deceased aunt were attacked by the appellant with a dao (long heavy iron blade with a wooden handle) causing grievous injuries to them. His uncle and aunt were admitted at Lakhipur Primary Health Centre (PHC). However, as the doctor referred them to Goalpara Civil Hospital, both the injured

persons were thereafter shifted to Goalpara Civil Hospital. In pursuant to the FIR submitted by PW-1, Lakhipur P.S. Case No. 371/2017 under Sections 447/326/307 IPC was registered. Soon after the registration of the criminal case, the wife of PW-11 died, due to the injuries sustained by her in the attack.

4. After investigation was completed by the Investigating Officer (IO), charge-sheet was submitted, wherein a *prima facie* case was found against the appellant under Sections 447/324/307/302 IPC. Charge was framed against the appellant under Sections 447/326/307/302 IPC, to which the appellant pleaded not guilty and claimed to be tried.

5. 13 (thirteen) prosecution witnesses were examined by the learned Trial Court and after examination of the appellant under Section 313 Cr.P.C, the learned Trial Court came to a finding that the appellant was guilty of the offence under Sections 447/324/307/302 IPC. He was accordingly convicted and sentenced as indicated in the foregoing paragraphs.

6. The learned Amicus Curiae submits that the evidence of PW-11, the injured eyewitness shows that the incident occurred when it was dark and as PW-11 had stated that he had poor eyesight, it could not have been possible for PW-11 to identify the appellant as the attacker. Further, though the appellant has been accused of attacking PW-11 and his wife with a dao, the dao was not recovered from the possession of the appellant, but was recovered from the house of the father of PW-1 (informant). He also submits that the father of PW-1 was not made a witness in this case. Further, the appellant was not arrested

from the house of the injured eyewitness i.e. PW-11, but was arrested from the house of PW-1. He also submits that the dao was not sent to the FSL for examination. Accordingly, the prosecution could not have been said to have proved the guilt of the appellant beyond all reasonable doubt. Further, there being no motive being attributed to the appellant for allegedly attacking PW-11 and his deceased wife, the prosecution case that the appellant was the perpetrator of the crime has to be discarded. He accordingly prays that the impugned judgment passed by the learned Trial Court should be set aside and the appellant should be acquitted of the charges framed against him.

7. On the other hand, Ms. B. Bhuyan, learned Additional Public Prosecutor submits that the appellant has been identified by PW-11, who is the injured eyewitness in the case, as the person who attacked PW-11 and his wife with a dao, due to which his wife died. She submits that the appellant was a neighbour of PW-11 and even though no motive could be attributed for the attack on PW-11 and his wife, the absence of motive cannot be considered to be fatal to the prosecution case, where ocular evidence is found to be reliable. She submits that PW-11 had recognized the appellant even with his poor eyesight as they were neighbours in the same village. As such, there is no reason to disbelieve the testimony of PW-11, as he was the injured eye witness, who was attacked by the appellant. She accordingly submits that there is no ground to interfere with the impugned judgment and the same should accordingly not be disturbed.

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

9. The evidence of PW-1 is to the effect that on the date of occurrence at

about 6:00 p.m., while he was in his house, the appellant wanted to cut him which necessitated PW-1 to run away from his house. The local people informed the police and the police came and caught the appellant from his house. On hearing a hue and cry from the house of PW-11, he went there and saw PW-11 and his wife in an injured condition. PW-11 thereafter told him that he and his wife had been cut by the appellant. Both the injured persons were taken to Lakhipur PHC, wherefrom they were shifted to Goalpara Civil Hospital. However, the wife of PW-11 succumbed to her injuries at Goalpara Civil Hospital. PW-1 also stated that he thereafter filed the FIR and the police recorded his statement. PW-1 also stated that the dead body of the wife of PW-11 was taken away for Post Mortem Examination and later on the dead body was handed over to them for cremation.

In his cross-examination, PW-1, who is the nephew of PW-11, stated that he did not see the assault made on PW-11 and his wife. He also denies the suggestion that he did not go to the house of PW-11 or did not see them in injured conditions. He also denied the suggestion that PW-11 did not tell him that he and his wife had been attacked by the appellant.

10. The evidence of PW-2 to PW-8 are hearsay evidence, except to the extent that PW-2 and PW-5 stated that they were seizure witnesses with regard to the seizure of the dao by the police.

11. The evidence of PW-9 is to the effect that he was posted at Goalpara Civil Hospital as Medical and Health Officer-I, wherein he examined the dead body of the wife of PW-11. He found multiple lacerated injuries all over the body of

various sizes and also multiple bruises all over the body, along with incise wounds caused by a sharp weapon on the back of the neck, both shoulder joints, both arms and on the left elbow. In his opinion, the death the wife of PW-11 was due to severe shock and haemorrhage, following multiple injuries all over the body which were ante mortem in nature and the time since death was about 20 hours.

12. The evidence of PW-10 is to the effect that he was the Medical Officer posted at Goalpara Civil Hospital and conducted the medical examination upon PW-11. He found deep cut injury on the left side of the neck and one over right forearm measuring 8x1x1 cm and 6x1x1 respectively.

In his cross-examination, PW-10 stated that the injuries were caused by a sharp weapon.

13. The evidence of PW-11, who is the injured eyewitness and who at the time of deposition was 70 years of age, is to the effect that the informant (PW-1) was his nephew. He also stated that he knew the appellant, who was from his village. The deceased was his wife and that about 1½ year ago, the incident occurred in his house at about 6 p.m.. While making 'Bidis', the appellant came to his house with a dao and attacked his wife and when he intervened, the appellant attacked him and struck him on his neck, forearm and forehead. He fell down and lost consciousness. PW-11 further stated that due to the assault his wife died, while he was hospitalized.

In his cross-examination, PW-11 stated that it was dark at that particular time and there was no light. The appellant was wearing a shirt. The house of

the appellant was on the south side of his house. His son Rakesh Boro was not at home at that time and other people did not see the incident. He stated that he did not see how his wife was cut. PW-11 denied the suggestion that the appellant did not attack his wife and himself. PW-11 also stated that his eyesight was weak and that he could not see properly in the dark.

14. The evidence of PW-12 is to the effect that he was working as a Medical and Health Officer at Lakhipur BPHC on 17.10.2017 and at about 7:30 p.m he conducted the medical examination of PW-11, who was around 70 years of age. On examination, he found a deep cut injury on the left backside of the neck, cut injury in both forearms, cut injury in the forehead, scalp and skull. He found the patient was in a critical stage and was referred to Goalpara Civil Hospital. The age of the injuries were one to two hours old. He also exhibited his Medical Report as Exbt.-5 and identified his signature as Exbt.5(1).

15. The evidence of PW-13, who is the Investigating Officer of the case, is to the effect that he had registered Lakhipur P.S. Case No. 371/2017 on the basis of the FIR submitted by PW-1. During investigation, he visited the place of occurrence and examined witnesses, besides preparing the sketch map. He seized the weapon (dao) from the possession of the appellant and arrested the appellant. He took steps for inquest and post-mortem examination on the dead body and also seized one saree. He also sent PW-11 for treatment and after collecting the inquest report and post-mortem examination report, he submitted his charge-sheet. He also stated that he did not send the seized weapon for expert examination and he did not collect any finger prints. He also stated that PW-1 did not tell him that he had heard hue and cry in the house of PW-11 or

that PW-11 had disclosed to PW-1 that he and his wife had been cut by the appellant.

16. In the examination of the appellant under Section 313 Cr.PC, the appellant has given a blanket denial with regard to the evidence that had been adduced against him. The learned Trial Court, on considering the evidence, came to a finding that the testimony of the injured witness (PW-11) was sufficiently reliable and trustworthy, to come to a finding of guilt against the appellant in causing the injuries inflicted upon PW-11 and the cause of death of the wife of PW-11. Accordingly, the learned Trial Court convicted the appellant under Sections 447/324/307/302 IPC.

17. On considering the statement of PW-1 made under Section 161 Cr.PC, we find that he has not made a mention with regard to PW-11 stating that PW-11 and his wife had been attacked by the appellant, though the same finds mention in his testimony given before the learned Trial Court. The Investigating Officer of the case (PW-13) has also confirmed the fact that PW-1 did not make any statement to him, to the effect that PW-11 had disclosed to him that he and his wife had been cut by the appellant. Though there is a omission in the contents of PW-1's statement made under Section 161 Cr.PC vis-à-vis his testimony before the learned Trial court, we find that PW-1 has for the first time in his evidence, stated that PW-11 had disclosed to him that he and his wife had been cut by the appellant. As such, the evidence of PW-1 with regard to the above statement can be said to be an improvement on his earlier statement made under Section 161 Cr.PC and cannot be relied upon.

18. The above being said, the fact remains that PW-11, who is 70 years old having poor eyesight, has identified the appellant as the person, who attacked him and his wife. The appellant is a neighbor of PW-11. There is no evidence to show that there was any enmity between the appellant and PW-11. No motive has been made known for the attack on PW-11 and his wife by the appellant. As such, there does not appear to be any reason for PW-11 to make any false allegation against the appellant, as the person who attacked him and his wife. Though a lack of motive could weigh heavily against the prosecution in a case of circumstantial evidence, the facts of this case shows that the incident of assault had been seen by PW-11, who is an injured eyewitness. PW-11 has not only identified the appellant, but has also been the recipient of the injuries inflicted upon him by the appellant, besides the appellant having taken away the life of his wife. In the case of ***Raghubir Singh -vs- State of Punjab***, reported in **(1996) 9 SCC 233**, the Supreme Court has held that even in the absence of motive, the guilt of the culprit can be established in a given case, if the other evidence on record is trustworthy. It was further held that the absence of proof of motive has never been considered as fatal to the prosecution case, where ocular evidence is found reliable.

19. In this particular case, we do not find any reason to doubt the evidence of PW-11, wherein he has identified the appellant as the assailant who had attacked him and his wife and in the result had taken away the life of his wife. The evidence of PW-13 is to the effect that he seized the weapon of assault (dao) from the appellant and there is no suggestion made by the appellant to the PW-13 during cross-examination that the weapon was not seized from him. Thus, we are of the view that the prosecution has been able to prove the guilt

of the appellant beyond all reasonable doubt.

20. In view of the reasons stated above, we do not find any ground to interfere with the impugned judgment passed by the learned Trial Court. The appeal is accordingly dismissed. Send back the LCR.

21. 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