

GAHC010231762017



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

Case No. : CrI.A./1/2017

SRI KHIRESWAR TANTI and ANR
S/O LT. TILAK TANTI,
R/O KACHARIHAT TARFAT GAON,
P.S. GOLAGHAT, DIST. GOLAGHAT

2: PATAL KARMAKAR
S/O LT. JITEN KARMAKAR
R/O KACHARIHAT TARFAT GAON
P.S. GOLAGHAT DIST. GOLAGHA

VERSUS

THE STATE OF ASSAM and ANR

2:BIPUL BORAH
S/O LT. MOHAN BORAH
R/O KACHARIHAT TARFAT GAON
P.S. GOLAGHAT
DIST. GOLAGHAT PIN 78562

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

For the appellants : Ms. B. Devi, Advocate.

For the respondents : Ms. B. Bhuyan, Addl. P.P.

Dates of hearing & judgment : 18.12.2023

JUDGMENT & ORDER

(M. Zothankhuma, J)

Heard Ms. B. Devi, learned counsel for the appellants. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam.

2. This appeal has been filed against the impugned judgment dated 01.10.2016 passed by the learned Sessions Judge, Golaghat, in Sessions Case No. 171/2005, by which the appellants, namely, Khireswar Tanti and Patal Karmakar, have been convicted under Sections 302/34 of the IPC and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 5,000/- each, in default, simple imprisonment for one month.

3. The prosecution story, in brief, is that an FIR dated 01.08.2005 was submitted by the brother of the deceased, who was Prosecution Witness No. 1 (in short PW1). The FIR stated that the appellant Khireswar Tanti and Patal Karmakar along with one Sri Gajen Tanti had chased the deceased at around 7.30 pm on 31.07.2005 and killed him by hitting him with a dao, axe and hammer etc. Thereafter, the accused persons had run away from the place of occurrence.

Consequent to the FIR dated 01.08.2005, Golaghat P.S. Case No. 376/2005 under Sections 302/34 of the IPC was registered against the appellants and Sri Gajen Tanti, who is an absconder in the case. After investigation was completed in the case, the Investigating Officer submitted the charge sheet, on finding a prima facie case under Sections 302/34 of the IPC against the appellants and Sri Gajen Tanti.

It may be stated herein that the appellant No.1 Khireswar Tanti is the

brother-in-law of the appellant No.2 Patal Karmakar. The deceased herein is also the brother-in-law of the appellant No.1 Khireswar Tanti, inasmuch as, Khireswar Tanti's sister, Aghuni Tanti was married to the deceased.

4. The learned Trial Court, thereafter, framed charge under Sections 302/34 of the IPC against the appellants and Sri Gajen Tanti, to which they pleaded not guilty and claimed to be tried.

5. In support of their case, the prosecution examined 9 prosecution witnesses. The defence also adduced evidence by examining one defence witness. The examination of the appellant No.1 under Section 313 Cr.P.C. was undertaken by the learned Trial Court on two occasions, i.e. 18.07.2012 and 04.08.2016. Similarly, examination of the appellant Patal Karmakar under Section 313 Cr.P.C. was done on 18.07.2012 and 04.08.2016. The learned Trial Court, thereafter, came to a finding that the appellants were guilty of committing the murder of the deceased in furtherance of their common intention to kill the deceased. As such, the appellants were convicted under Sections 302/34 of the IPC and sentenced, as stated in the forgoing paragraphs.

6. Ms. B. Devi, learned counsel for the appellants, submits that the incident appears to have occurred due to a quarrel that had arisen between the deceased and his wife, who is the sister of the appellant No. 1. She submits that there was no independent eye witness to prove the assault on the deceased by the appellants, inasmuch as, PWs 1, 4 & 7 are the brothers of the deceased and as such, interested witnesses. As they are interested witnesses, their evidence will have to be taken with a pinch of salt and would need greater scrutiny. She submits that the action of the appellants being due to sudden provocation by

the deceased, the charge framed against the appellants should be altered to that under Section of 304 Part-1 of the IPC.

7. Ms. B. Bhuyan, learned Addl. Public Prosecutor, Assam, submits that there is no contradiction in the evidence given by the eye-witnesses, vis-a-vis, the statements given under Sections 164 and 161 Cr.P.C. She also submits that PW Nos. 1, 4 & 7 being eye witnesses to the incident and their testimony having withstood the cross-examination, the case of the prosecution has been proved beyond all reasonable doubt. Further, PW1, who is the brother of the deceased, is also an injured eye witness. She also submits that the evidence of PW2, who is the mother of the deceased, is to the effect that the deceased had told the mother that he had been assaulted by the appellants. As such, due to the extra judicial confession being made, which corroborates the evidence of the eye witnesses, there was no ground to interfere with the impugned judgment.

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

9. The evidence of PWs 1, 4 & 7, who are the brothers of the deceased, show that they had seen the appellants and Gajen Tanti assaulting the deceased with an axe, hammer and rod.

10. PW1, in his evidence, has stated that on hearing that the deceased was being assaulted, he went to the place of occurrence and found the appellants and Gajen Tanti there. The appellant No. 1 was armed with a rod. An axe, hammer and dao was lying near his elder brother. On seeing him, the appellant No. 2 and Gajen Tanti ran away. However, the appellant No. 1 hit him with a rod on his arm saying that he would kill him too. PW1, thereafter, snatched away the rod from the appellant No. 1 and hit him twice, due to which the appellant

No. 1 fell to the ground. While calling his family members, appellant No. 1 fled from the place of occurrence. PW1 stated that he saw the cut injuries on the head of his brother and piercing injuries caused with the rod in the abdomen and cheek of the deceased. The police seized the axe which was exhibited as Material Exhibit-1 and the hammer which was exhibited as Material Exhibit-2.

11. The evidence of PW4, who is another brother of the deceased, is to the effect that on hearing a hue and cry near the house, PW4 went out of the house, where he found the appellants and Gajen Tanti assaulting the deceased with an axe, hammer and a rod. The appellant No. 1 was armed with a rod, while Patal Karmakar and Gajen Tanti were armed with an axe and hammer respectively. Although the appellant No. 1 chased PW4 and tried to hit him with the rod, he missed, as PW4 had moved aside. Thereafter, the appellant No. 1 dealt a blow to PW1 with the rod, whereupon PW1 also hit the appellant No. 1 twice with a fence post. PW4 also stated that the deceased died on the spot.

In his cross-examination, PW4 stated that the deceased had married the younger sister of the appellant No.1 and that the family members had not given consent to their marriage.

12. The evidence of PW7, who is another brother of the deceased, is that on hearing an alarm call outside his house, he came out and saw the appellant Nos. 1 and 2 assaulting the deceased. After the assault on his brother, the appellants went to the police station. He also stated that he put his signature in the seizure list regarding the seizure of the axe and hammer from the place of occurrence.

13. The evidence of PW2, who is the mother of the deceased, is to the effect

that while she was cooking rice at about 6 pm, she heard a hue and cry. When she went out with the help of a lamp, she found the deceased lying in the field. The appellant Nos. 1 and 2 were there and the appellant No. 1 told her that he had turned the deceased into a dead body. The appellant No. 1 then tried to assault PW1 with a rod. PW2 stated that she saw PW1 holding the rod and seeing the dead body of the deceased, PW2 became unconscious.

In her cross-examination, PW2 stated that the deceased had eloped with the younger sister of the appellant No. 1 and they lived as husband and wife. Since the appellant No. 1 belonged to a different community, they were not on visiting terms. Further, the deceased consumed liquor now and then and the married couple had a falling out quite often. Even on the day of the occurrence of the crime, the couple had a quarrel, whereupon the wife of the deceased left for her maternal home.

14. The evidence of PW3, who was the Medical and Health Officer at K.K. Civil Hospital, Golaghat, who conducted post mortem examination on the appellant, is to the effect that there were deep cut injuries over the left occipital region with fracture. There was cut wound on the cheek and the membrane was lacerated. The brain was also lacerated in the left occipital area and the injuries were ante-mortem in nature. He further stated that the injuries were caused by a sharp weapon. In his opinion, the cause of death was due to shock following haemorrhage, as a result of injuries sustained by the deceased. The particulars of the injuries sustained by the deceased and the opinion of PW3 for the cause of death of the deceased, as per his evidence, are reproduced as follows:-

“Injuries.

- 1) Deep cut wound of 15 cm x 4.5 cm x 8.5 cm over left occipital region with fracture

of underlying bone.

2) cut wound 5 cm x 4 cm x 2 cm parallel to wound No.1 above with fracture of left occipital bone.

3) cut wound of size 3 cm x 1.5 cm x 1.5 cm over left side of cheek with fracture of left mandible.

4) Injuries described above are caused by sharp weapon.

5) Membrane- lacerated with blood clot in left occipital region.

6) Brain lacerated in left occipital area.

7) Injuries are ante mortem in nature.

8) Other organs are healthy.

In my opinion, cause of death is due to shock following haemorrhage as a result of injuries sustained by the deceased, within 24 hours of examination and caused by sharp weapon.

Injury No.1 and 2 both are fatal injuries and are sufficient to cause death of a person in the ordinary course of nature.

Ext-3 is my post mortem report, Ext-3(1) is my signature, Ext-3(2) is the signature of Superintendent and Ext-3(3) is the signature of Joint Director, Health Services, Golaghat. I know their signature."

15. The evidence of PW Nos. 5, 6 & 8 are only hearsay evidence. The evidence of the first Investigating Officer, Romesh Changmai, could not be recorded by the learned Trial Court, as he had expired on 17.01.2007, i.e. after submitting the charge sheet on 21.09.2005. However, the evidence of PW9, who was the O.C. of Golaghat P.S., is to the effect that on 01.08.2005, he received the FIR submitted by PW1 and he registered Golaghat P.S. Case No. 376/2005 under Sections 302/34 of the IPC. A.S.I. Ramesh Changmai was endorsed to investigate the case, while PW9 supervised the investigation. The I.O. seized an

axe and a hammer, both fitted to a bamboo handle, which were exhibited as Ext. 1 and Ext. 2. PW9 further stated that Ramesh Changmai submitted the charge sheet under Sections 302/34 of the IPC.

16. The evidence of DW1, who is the owner of the truck, is to the effect that appellant No. 2 drove his vehicle from 2001-2005 as a driver. On the day following the day of the occurrence of the incident, the wife of the appellant No. 2 came to his house crying and told him that the appellant No. 2 had been taken by the police.

17. The examination of the appellants under Section 313 Cr.P.C. on 18.07.2012 is basically to the effect that they had nothing to say with regard to the evidence adduced against them. However, in the subsequent examination of the appellants under Section 313 Cr.P.C., which was taken four years later, i.e. 04.08.2016, the appellants answer with regard to the evidence adduced against them was that the same were false.

18. On perusing the evidence given by PW Nos. 1, 4 & 7, the same cannot be discarded, especially when there is no whisper of any enmity or reasons for PW Nos. 1, 4 and 7 to give any false evidence. Further, the evidence of the eye-witnesses, i.e., PW-1, 4 & 7 have not been shaken or controverted during cross examination. In the case of ***State of Uttar Pradesh -vs- Samman Dass***, reported in ***AIR 1972 SC 677***, the Supreme Court has held that the relationship of the prosecution witnesses to the deceased, by itself is not sufficient for disbelieving their testimony, unless motive is proved against them to spare the real assailants. It is well known that relatives of a murdered person are most reluctant to spare the real assailants and falsely involve another person in place of the assailants, especially when there is no evidence on record

to show that there exists any animus between the accused persons and the deceased. In this case, no evidence relating to any enmity has been adduced between the appellants and the prosecution witnesses, who are relatives of the deceased, except to the extent that the marriage of the deceased with the sister of the appellant No. 1 was disapproved by the family, as they belonged to different communities.

19. There is nothing to show that there was any provocation on the part of the deceased, to have given reason for the appellants to kill the deceased. In any event, the act of killing the deceased due to a quarrel between a husband and wife, without any whisper of any cruelty on the part of the deceased, does not justify the act of the appellants. The action of killing a person by a third person (appellants), due to a quarrel between a couple, cannot be said to be a proportionate response to an alleged provocation.

20. On perusing the provisions of Section 300 IPC and the Exceptions therein, there is nothing to show that there was any sudden provocation on the part of the deceased to have given a reason to the appellants, for the deadly attack made on the deceased by the appellants. The deadly weapons used and the serious injuries sustained by the deceased on the vital parts of his body, show that the Exceptions to Section 300 cannot be attracted to the facts of this case. Further, the deceased was unarmed, while the attackers, who were three in number, were apparently armed to the teeth.

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

22. The bail granted to the appellant No. 1, Khireswar Tanti, vide order dated 10.02.2017 passed in I.A.(Crl.) 56/2017 in Crl. A. 1/2017, is cancelled. He is directed to surrender before the Court of learned District and Sessions Judge, Golaghat immediately, to serve out the remaining sentence. Besides the above, the respondent police are also directed to take the appellant No. 1 into custody and produce him before the learned Trial Court for further incarceration in jail.

23. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant