

GAHC010212192019



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

Case No. : CRL.A(J)/83/2019

RATUL DUTTA @ KONPUTOW
S/O. SRI NOBIN DUTTA, R/O. HOLOIPARA, P.S. AND DIST. DHEMAJI,
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MS. D SAIKIA (AMICUS CURIAE)
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGMENT & ORDER (CAV)

Heard Ms. D. Saikia, learned Amicus Curiae. Also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam.

2. This appeal has been preferred by the accused appellant from jail against the judgment and order dated 12.03.2019 passed by the learned Sessions Judge, Dhemaji in Sessions Case No. 38(DH)/2018 under Section 326/307 IPC whereby the accused appellant was convicted and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of

Rs.1,000/- in default RI for one month for the offence under Section 307 IPC. The appellant was also sentenced to undergo RI for five years and to pay a fine of Rs.1000/- in default, RI for another one month under Section 326 IPC. Both the sentences were directed to run concurrently.

3. The brief facts of the case is that the 09.03.2018, an FIR has been lodged before the in-charge, Machkhowa police outpost under Dhemaji police station stating *interalia* that on the same day at about 6 am in the morning hour, while the injured, wife of the informant came out from the room by opening the back door of their house, suddenly the accused appellant attacked her with a mit dao causing grievous injuries on her person. Having seen the incident, the mother of the complainant (PW-7) raised hue and cry and some neighboring people came to the spot and saved the life of the injured. They also called 108 ambulance and the injured victim was taken to Dhemaji Civil Hospital for treatment and thereafter, she was shifted to Dibrugarh Medical College for better treatment.
4. On receipt of the complaint, one GD entry was recorded vide Machknowa outpost GDE No. 146 dated 09.03.2018 and forwarded the same to O/C, Dhemaji police station for registering a case. Accordingly, a case was registered vide Dhemaji PS Case No. 90/2018 under Section 341/326/307 IPC and the investigation was initiated. On completion of investigation, charge-sheet was laid against the accused appellant under the aforesaid Sections of law. As the offence under Section 307 IPC is exclusively triable by the court or Sessions, the case was committed accordingly.
5. During trial, charge was framed under Section 326/307 IPC which was

read over and explained to the accused appellant to which he pleaded not guilty and claimed to be tried. To substantiate the case of the prosecution, nine witnesses were examined and exhibited eight documents and marked one material exhibit, the alleged Khukri by which the appellant inflicted injury towards the victim. At the closure of the prosecution evidence, statement of the appellant was recorded under Section 313 Cr.P.C. wherein the incriminating materials found in the statement of the witnesses were put to him to which he denied the same. After hearing the arguments advanced by the learned counsel for the parties, the accused appellant was convicted as aforesaid.

6. The submission of the learned Amicus Curiae is that the trial court has failed to appreciate the contradiction between the victim and the other prosecution witnesses in respect of the weapon and the time of occurrence. It is further submitted that except the victim, there is no eye witness to the incident. The seizure witness stated that he put his signature in the seizure list in the police station and hence, the recovery of the material object is doubtful.
7. Learned Amicus Curiae has further submitted that though the accused was convicted under Section 326 and 307 IPC for a period of seven years and five years respectively, however, he has completed the period of five years in jail since the date of delivery of judgment. As the appellant has already in jail for almost six years, his sentence of seven years be reduced to already undergone.
8. In support of his submission, learned Amicus Curiae has relied on a case law in Crl. A. No. 17/1969 (*Jay Narayan Misra and others vs State of Kerala*).

9. Per contra, learned Additional Public Prosecutor has submitted that except the victim, PW-7 is the eye witness to the incident. PW-1, 5 and 6 had also seen the accused appellant while leaving the place of occurrence with the alleged weapon in his hand. The FIR was lodged immediately after the incident alleging the commission of offence by the accused appellant and the same was corroborated with the medical evidence.
10. It is further submitted that the discrepancies pointed out by the learned Amicus Curiae are minor in nature and the same has not materially affected the evidence of the injured witness. PW-2 clearly deposed about the assault caused by the accused appellant towards her and the injuries sustained by her was corroborated by the medical evidence. Learned trial court has rightly convicted the appellant under Section 307/326 IPC with minimum punishment which needs no interference by this Court.
11. This court has considered the rival submission made on either side and perused the materials on record including the judgment of the trial court.
12. In this case, PW-2 is the injured victim and PW-7 is the eye witness to the incident.
13. According to PW-2, on the date of incident, in the morning hour at about 5-6 am when she got up from bed and went to open the kitchen door, at the moment the accused attacked her from behind and inflicted dao blows on her head, right shoulder and right arm. When the first blow fell on her, she turned around and saw the accused but when he inflicted the second blow, she fell on the ground and became unconscious. She

regained her sense at Dibrugarh Medical College Hospital. This witness (PW-2) also stated that prior to the incident, the accused used to visit her house and disturb her by sitting in the kitchen for a long time for which she told him that not to disturb her in that way without any business for which he was not happy and used to threaten them that they belong to Nepali community and he along with others would drive them away from the village. Subsequently, she informed the matter to VDP Secretary of their village and lodged a complaint at the police station. Police arrested him and he was sent to jail. After disposal of the case in the court, the accused assaulted her.

14. In her cross-examination, PW-2 replied that when the accused inflicted the first blow, she raised hue and cry but she did not mention the name of the accused.

15. PW-1 is the informant who is the husband of the victim. He deposed in his evidence that on 09.03.2018 in the morning hour while he was sleeping in his house, he heard the screaming of his mother and he came out and saw that his wife was lying in the courtyard with cut injuries on his head and shoulder. Blood was oozing out from her injuries. She was found unconscious. At the moment, he also had seen that accused, Ratul Dutta leaving from their courtyard with a dao in his hand. His wife was treated at Dibrugarh Medical College Hospital as indoor patient for 23 days.

16. In his cross-examination, PW-1 replied that at the time of incident all the family members were present in their house. There are other dwelling houses near their house to the East, Gopal Chetri resides; on the west Subeder Chetri, on the north Dilip Chetriy, and on the south there is house

of Ratna Kakoti.

17. PW-7 is the mother-in-law of the victim. From her deposition, it reveals that on the date of incident in the morning hour, she got up from bed and came out in the courtyard of their house. Her daughter in law was behind her. She heard her cries and when turning around she saw that accused Ratul Dutta was inflicting dao blows on her daughter-in-law. She raised hue and cry and the accused fled away. Her daughter in law sustained injuries on her hand and head.
18. In her cross-examination, PW-7 replied that she did not see the accused when he entered into their courtyard
19. PW-3 and 4 are the seizure witnesses. Having heard hue and cry from the house of the victim, they came to the spot and found injury on the person of the victim Sabita Chetri. On being asked, she replied that accused inflicted cut injury on her head, hands and other parts of her body. Then the VDP members with the help of villagers apprehended the accused and handed over him to the police. Police seized one Khukoori from the possession of the accused vide seizure list, Ext-2.
20. PW-3 and 4 also proved the Khukri vide material ext-1 before the court.
21. PW-5 and 6 are the neighbours of the victim. They stated that on the date of incident at about 6 am they heard hue and cry in the house of Sabita Chetri. They went there and saw that Sabita Chetri was injured. She sustained injury on her head and shoulder. They also noticed the accused going away from her house with a dao in his hand.
22. PW-8 is the Investigating Officer. He deposed in his evidence that on

09.03.2018, he was posted as in-charge of Machkhowa outpost under Dhemaji police station. On that day, at about 6.05 am VDP Secretary, Durgeswer Dutta informed him over phone that one Ratul Dutta inflicted dao blow to Sabita Chetri as a result of which she sustained grievous injuries on her person. Accordingly, a GD entry was recorded vide No. 146 dated 09.13.2018. Thereafter, he visited the place of occurrence and drew the sketch map and also recorded the statement of the witnesses. Villagers apprehended the accused and handed him over to him. He seized one Khukri from the possession of the accused. On the same day, he received an FIR from the informant, Dipak Chetri and subsequently, a case was registered vide Dhemaji PS Case No. 90/2018. He, thereafter, formally arrested the accused. He collected the injury report of the victim. After completion of investigation, he submitted the charge-sheet against the accused/appellant under Section 341/326/307 IPC vide Ext-5.

23. PW-9 is the Medical Officer who examined the victim. From his deposition, it discloses that on 09.03.2018 he was posted at Dhemaji Civil Hospital as Medical and Health Officer-I. On that day, on police requisition, he examined the victim Sabita Chetri. On examination, he found as follows:

“Alleged history of physical assault by a neighbor person on 09.03.2018. Patient was conscious and alert. Bleeding was seen from her head. The following injuries were seen:

- 1. An incised wound with bony cut seen over the right parietal region and size is approx-6 cm x 2 cm x 1 cm.*
- 2. An incised wound also noted over the right scapular region and its size is 2x1x1 cm.*
- 3. Another incised wound seen over the ventral aspect of right wrist joint and its size is 6x1x1 cm.”*

24. In this case, to find out the perversity in the appreciation of the evidence of the injured eye witness, this Court is duty bound to remember of the detailed guidelines issued by the Hon'ble Supreme Court in the case of *Balu Sudam Khalde and another vs State of Maharashtra*, reported in (2023) SCC online SC 355.

“APPRECIATION OF ORAL EVIDENCE

25. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

“I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not

going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being

disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

*XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.” [See [Bharwada Bhoginbhai Hirjibhai v. State of Gujarat](#), 1983 Cri LJ 1096) *Leela Ram v. State of Haryana*, (1999) 9 SCC 525 and *Tahsildar Singh v. State of UP* (AIR 1959 SC 1012)].”*

25. When the evidence of an injured eye witness is to be appreciated, the under noted legal principles enunciated by the courts are required to be kept in mind.

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not

the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

26. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

27. In this case, PW-2 in her evidence clearly stated that on the date of incident in the morning hour, when she woke up and came out from the room to open the kitchen door which is not adjacent to her room, suddenly, the accused attacked her from behind with a dao causing injury on her head and shoulder. She raised alarm. Her mother-in-law, PW-7 having seen the incident rushed to the spot and also raised hue and cry.

Subsequently, the neighboring people PW-3, 4, 5 and 6 came to the spot. PW- 5 and 6 had also noticed the accused leaving the courtyard of the victim with a dao in his hand. The Medical Officer proved the fact having found cut injuries on the head, hand and shoulder of the victim. Admittedly, the incident occurred in the morning hour at around 6 am. It is also not in dispute that other members of the family like PW-1 and PW-7 were present at home at the relevant time. The evidence of injured witness corroborated with the medical evidence of PW-9, who, clearly deposed about the injuries sustained by the victim. Further, PW-2 withstood the cross-examination and nothing could be elicited to discredit her testimony and her evidence is found to be cogent and trustworthy which inspires confidence of this Court. This Court finds no major contradiction, inconsistency or any infirmities in the evidence of PW-2 to discredit her evidence.

28. The trial court has clearly analyzed the evidence of the witnesses along with the medical evidence and came to the conclusion that the accused appellant attacked the victim with alleged weapon i.e. material exhibit-1 and hence, there is no perversity in the finding of the trial court.

29. The evidence of PW-5 and 6 who are the neighbours of the victim deposed that they saw the accused running away from the place of occurrence immediately after the incident. Subsequently, the accused was apprehended by the villagers and handed him over to the police and the material object i.e. the Khukri vide material Ext-1 was recovered from the possession of the accused. Even in their cross-examination, they affirmed the same. Their evidence is admissible on the principle of *res gestae* under Section 6 of the Indian Evidence Act.

30. In the case of ***Jodhan vs State of Madhya Pradesh reported in (2015) 11 SCC 522***, it was observed that:

“ the injured witness has been conferred special status in law and the injury sustained by him is an inbuilt guarantee of his presence at the place of occurrence.”

31. In another case ***Balban and others vs State of Haryana reported in (2014) 13 SCC 560***, it was held that:

“it is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let the actual assailant go unpunished.”

32. In view of the aforesaid discussion, this Court is of the opinion that the trial court has appreciated the evidence of the witnesses in true perspective including the medical evidence of the victim. It is apparent that the victim sustained injuries on her head which is a vital part of the body. Therefore, intention of the appellant cannot be ignored. Hence, the judgment passed by the trial court dated 12.03.2019 is hereby affirmed. However, considering the fact that the appellant has undergone major part of his sentence, the order of sentence under Section 307/326 IPC is reduced to the period already undergone by the appellant. The accused appellant be released accordingly, if not wanted in any other case.

33. In the result, the appeal is partly allowed and disposed of accordingly.

34. Trial Court record be returned back.

JUDGE