

GAHC010016722018



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

Case No. : CrI.A./48/2018

GANESH TANTI
R/O VILL. BORMANTI, PS. BOKAJAN, DIST. KARBI ANGLONG, ASSAM.

VERSUS

STATE OF ASSAM
REPRESENTED BY PP, ASSAM.

2:MANIK BORGHAIN
R/O VILL. CCI
BOKAJAN
P.S. BOKAJAN
DIST. KARBI ANGLONG
ASSAM
PIN 78248

For the appellant : **Mr. T. J. Mahanta, Sr. Advocate.**
Mr. A. Bhattacharya, Advocate.

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

BEFORE

HON'BLE MR. JUSTICE SUMAN SHYAM
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

Date of hearing : 02.12.2024.

Date of judgment : 02.12.2024.

JUDGMENT & ORDER (Oral)

(Suman Shyam, J)

This Criminal Appeal is directed against the judgment and order dated 01.12.2017/05.12.2017 passed by the learned Sessions Judge, Diphu, Karbi Anglong in Sessions Case No.61/1988 (old)/ 242/17 (new) convicting the sole appellant under section 302 of the Indian Penal Code (IPC) for committing the murder of Jiten Saikia and sentencing him to undergo rigorous imprisonment for life and also to pay a fine of Rs.2000/-, in default, to suffer rigorous imprisonment for another six months.

2. The prosecution story, in a nutshell, is that on 10.05.1988, at about 1-45 p.m. the appellant Ganesh Tanti had hacked the deceased Jiten Saikia with a sharp dao on the neck causing his instantaneous death. On 10.05.1988 itself, the brother-in-law of the deceased viz., Sri Manik Borgohain (PW-2) had lodged a written ejahar before the Officer-in-Charge of the Bokajan Police Station, Bokajan informing him about the incident. Based on the aforesaid ejahar, Bokajan P.S. Case No.111/1988 was registered under Section 302 of the IPC. Thereafter, the police took up the case for investigation. During investigation, confessional statement of the accused/appellant was recorded by the Magistrate. On completion of investigation charge-sheet was submitted under section 302 of the IPC. Since the appellant had pleaded not guilty, he was subjected to trial. Accordingly, charge was framed against the appellant/accused under section 302 of the IPC.

3. During the course of trial, the prosecution side had examined as many as 12 witnesses including the Investigating Officer, who had conducted investigation in

connection with the police case and submitted charge sheet, as PW-9. PW-5 was examined as an eye-witness to the occurrence. After recording of evidence of the prosecution witnesses, the statement of the accused/appellant was recorded under section 313 of the Cr.P.C. The appellant, however, did not adduce any evidence in his defence.

4. On conclusion of trial, based on the evidence available on record as well as the confessional statement of the accused/appellant exhibited as Ext-5, the learned trial court had convicted the appellant for committing the offence under Section 302 of the IPC and sentenced him as aforesaid. Being aggrieved by his conviction under Section 302 of the IPC and the consequent jail sentence of life imprisonment awarded to him by the learned Court below, the appellant has preferred the present appeal.

5. We have heard Mr. T. J. Mahanta, learned senior counsel assisted by Mr. A. Bhattacharya, learned counsel appearing for the appellant. Also heard Ms. B. Bhuyan, learned Addl. Public Prosecutor, Assam appearing for the State.

6. As noted above, the prosecution had examined Sri Purna Chandra Gogoi (PW-5) as an eye-witness to the occurrence. PW-5 was working as a security guard in the factory of Cement Corporation of India (CCI) Ltd. at Bokajan when the incident took place. He has deposed that on 10.05.1988, when he had come to attend his duties at the factory in his motorcycle, he saw the accused, also a worker in the CCI, cut the deceased on the neck with a dao and the victim fell down on the road from his bicycle. He could recognize both the accused and the victim. He had raised

'hulla' saying "catch, catch" asking people to catch hold of the accused but he ran away waving the dao in the air by shouting that he is yet to avenge another three persons. PW-5 has also stated that after the incident the accused had boarded a rickshaw and proceeded towards Bokajan Police Station and surrendered before the police. Cross-examination of PW-5 was declined.

7. PW-1, Smti. Puspa Saikia is the wife of the deceased. She did not see the occurrence but on hearing the 'hulla' she came out of her house and heard that her husband had been killed. The neighbours had told her that accused Ganesh Tanti had killed her husband.

8. PW-2, Sri Manik Borgohain is the brother-in-law of the deceased and also the informant in this case. He has deposed that the occurrence took place on 10.05.1988 at about 1:45 p.m. At that time he was present in his house. Hearing the 'hulla' he came out of his house and thereafter, learnt that Jiten Saikia was lying on the road in front of the Civil Hospital. This witness has deposed that he had seen Jiten Saikia lying in a pool of blood and some people told him that accused Ganesh Tanti had killed him. PW-2 has stated that he had lodged the ejahar Ext-1 with the Bokajan Police Station and Ext-1(1) was his signature. Police came to the spot upon receipt of the ejahar. Thereafter, the dead body was taken to Bokajan Police Station. He found that the accused was in the Police Station on being arrested by the police upon his surrender.

9. Sri Dharmeswar Gogoi was examined as PW-3. This witness had seen the dead body of Jiten Saikia with cut injuries in his body. PW-3 has deposed that at that time,

PW-5 Sri Purna Chandra Gogoi was standing by the side of the dead body and told him that accused Ganesh Tanti had cut the deceased and killed him in his presence. PW-3 has also deposed that he had accompanied the dead body to the Police Station and then to the Diphu Civil Hospital for post-mortem examination. Cross-examination of this witness was also declined.

10. PW-4, Sri PMB Pillai was working as the Security Inspector in CCI, Bokajan when the incident took place. He had not seen the occurrence but has deposed before the Court that on 10.05.1988, while he was on duty at the CCI factory gate, 3/4 persons came running to him and informed that a worker named Jiten Saikia had been killed with a dao by another co-worker named Ganesh Tanti. He then straight away went to the Police Station i.e. Bokajan P.S. When he visited the place of occurrence with the police he found that Jiten Saikia was lying dead with multiple cut injuries. This witness has further stated that the accused had appeared before the police with a dao and admitted that he had killed Jiten Saikia. Cross-examination of this witness was declined.

11. PW-6, Dr. T. Ingfi was the doctor on duty at the Civil Hospital, Diphu and had conducted the post-mortem examination on the dead body of Jiten Saikia. According to PW-6, the following injuries were found in the dead body :-

“(1) External app :- a male dead body of about 5 ½ “ height with deep sharp cut wound as described below R.P. present report whole body stained with chocked blood antemortem flesh wound (1) through and through sharp cut including complete circle of neck cutting of cervical spines and vertebrae.

(2) Complete transaction of the spinal chord cutting major veines of the

neck and vertebrae by cutting spinal chord in the left side with cutting of cervical spine & parietal region."

The doctor (PW-6) had opined that the injuries were fresh and were caused by sharp cutting weapon leading to the death of the deceased due to the complete transaction of the spinal bone.

12. Sri Purna Kanta Nath was running a nearby Pan shop when the incident happened. He was examined as PW-7. This witness has stated that on the date of the incident he had seen a person striking at something like striking a snake. After some time, the accused came down from the place with a dao in his hand, stained with blood. Later on, he realized that the accused had cut the victim. This witness has, however, admitted during his cross-examination that he did not see the accused striking the victim with a dao. PW-7 is an inquest witness and he has proved his signature Ext-2(1) in the Inquest Report.

13. Sri Deben Bordoloi (PW-8) was the constable serving at the Bokajan Police Station when the incident took place. This witness has deposed that on the date of the incident, he had received a phone call from the Inspector, CCI Mr. Pillai and requested him to inform the O/C. Accordingly, he had rushed to the residential quarter of the Officer-in-Charge of the Police Station and informed him about the telephonic message. When he returned back to the Police Station he saw the accused getting down from a rickshaw with a dao in his hand stained with blood. The accused had told him that he had committed murder in the CCI and had come to surrender. He then dropped the dao and the accused was put in the lockup. Immediately thereafter, the Officer-in-Charge arrived at the Police Station and seized

the dao vide seizure-list Ext-4. The witness has confirmed that Mat. Ext-2 is the dao which was seized vide Ext-4. This witness could not be shaken during his cross-examination.

14. Sri Gunadhar Bora was serving as the Officer-in-Charge of the Bokajan Police Station when the incident took place is the Investigating Officer (I.O.) in this case. He was examined as PW-9. The I.O. has deposed before the Court about the usual steps taken by him in this case since receipt of the information through telephone call made by Sri Pillai. PW-9 has confirmed that the accused came to the Police Station with a blood stained dao in his hand and told him that he came to the Police Station after killing the Chief Supervisor, CCI Packing Plant viz., Jiten Saikia and surrendered before him. PW-9 had then arrested the accused, seized the blood stained dao and after putting the accused in the lockup, went to the place of occurrence where he saw the dead body of deceased Jiten Saiikia lying near the CCI campus. He had prepared the inquest report Ext-2, seized some other articles, recorded statements of the witnesses and collected the post-mortem report and after completion of investigation, submitted charge-sheet under Section 302 of the IPC. PW-9 has also confirmed that the ejarah was lodged by the brother-in-law of the deceased i.e. PW-2. He has further deposed that the accused had shown his willingness to record confession of his guilt and accordingly, the accused was forwarded to the Diphu court for recording his confessional statement. The confessional statement of the accused was recorded by the Magistrate.

15. PW-10, Sri Promod Mishra was present at the Pan shop near the place of

occurrence on 10.05.1988 when the incident took place. This witness has deposed that from a distance of about 80 ft. he had seen one person attacking another, on the neck, with a dao. Later, he came to know that the deceased was Jiten Saikia and the man who killed him had already proceeded towards the Thana with a dao in his hand. He had learnt that the killer was Ganesh Tanti.

16. PW-11, Sri Mukul Bora was present at a hotel near CCI, Bokajan when the incident took place. This witness has deposed that hearing some noise he had come out of the hotel and saw that one person was lying on the street with physical injuries on the neck. He was Jiten Saikia. Ganesh Tanti, the accused was shouting near the injured person with a dao in his hand. Jiten Saikia died on the spot. Police came to the place of occurrence and recorded his statement.

17. PW-12, Sri Gokul Mohan Hazarika was the Magistrate 1st Class, Diphu Court, who had recorded the confessional statement of the accused. PW-12 has deposed that on 11.05.1988, at about 11:30 a.m. the accused Ganesh Tanti was produced before him. He had explained to the accused the implications of recording a confessional statement and asked him whether he was making the confession voluntarily. However, at that time, the accused was not found to be in a normal mood and therefore, he was sent to Judicial custody till the next day i.e. 12.05.1988 for reflection. On the next day i.e. on 12.05.1988, when the accused was again produced before him, his confessional statement was recorded. PW-12 has further deposed that on that day, no police officer was allowed to come to his room. After having explained in details once again, the implications of the confessional

statement and on being satisfied that the accused wanted to voluntarily make a confession of his guilt, he had recorded the confessional statement of the accused. PW-12 has proved the confessional statement as Ext-5 by identifying his signature therein.

18. The confessional statement of the accused (Ext-5) clearly goes to show that the accused had confessed to having killed the deceased with a dao. In his confession, the accused had not only given a vivid description of the sequence of events preceding the incident but had also mentioned the reason as to why, he had killed the victim with a dao. In his confessional statement the accused has stated that after killing the deceased he had proceeded to the Thana to surrender. The accused has further stated that although the man had died at the first blow itself, yet, he gave him few more blows. It is also the statement of the accused that he held the deceased responsible for the deplorable condition and sufferings of the fellow workers.

19. After a careful analysis of the evidence available on record, we are of the view that the PW-5 had in fact witnessed the occurrence and there is no inconsistency in his testimony. That apart, as has been mentioned above, the defence side had declined the cross-examination of this witness. Under such circumstances, there is no element of doubt in our minds that the prosecution has succeeded in establishing the murder charge brought against the accused based on eye-witness account of PW-5 alone.

20. The version of the PW-5 finds ample support and corroboration from the

testimonies of other witnesses such as PWs-3, 4, 7 and 10. That apart, the medical evidence not only establishes the homicidal death of the deceased but the nature of injuries found during the post-mortem examination squarely fits into the testimony of the eye-witness PW-5.

21. From a careful reading of the materials on record, we also find that the confessional statement of the accused was recorded after scrupulous compliance of the requirements of law and after giving the accused sufficient time for reflection. The confessional statement so recorded not only gives a detail account of the incident but is also found to be consistent with the evidence brought on record through the other prosecution witnesses. Therefore, although during his examination under Section 313 Cr.P.C. the accused had made an attempt to retract from his confessional statement, we do not find any justifiable ground to discard his confessional statement merely because the accused has stated that he had recorded the same under duress. The evidence of PW-12 does not, in any manner, indicate the presence of police at the time of recording the confessional statement of the accused. Rather, it appears that no police person was present in the vicinity when the confessional statement of the accused was recorded. As such, the retraction of his confession by the accused during recording of his statement under section 313 Cr.P.C. appears to be utterly preposterous and hence, deserves to be rejected by this Court.

22. Mr. Mahanta, learned senior counsel for the appellant has submitted, in his usual fairness, that having regard to the bulk of evidence available on record it cannot be said that the charge brought against the accused has not been proved

beyond reasonable doubt. However, according to Mr. Mahanta, there is a serious flaw in the trial of this case since all the incriminating circumstances were not put to the accused while recording his statement under section 313 of the Cr.P.C. By placing reliance on a decision of this Court rendered in the case of **Gobind Singhal & others Vs. State of Assam and another** reported in **2022 (2) GLT 790** Mr. Mahanta has argued that since all the incriminating circumstances relied upon for his conviction, had not been put to the accused while recording his statement under Section 313 Cr.P.C. it is evident that a fair trial was denied to the accused. Therefore, the judgment and order of conviction is liable to be set aside on such count alone and a retrial be ordered by this Court from the stage of recording of the statement of the accused person.

23. After examining the record, we find the learned trial court has put to the accused only two of the several incriminating circumstances available against him. The incriminatory materials including the evidence of the eye-witness PW-5 and other witnesses such as PWs-1, 3 and 4 were not put to the accused while recording his statement under Section 313 of the Cr.P.C. Evidence adduced by these witnesses including the eye-witness (PW-5) was relied upon for convicting the appellant/accused.

24. Ordinarily, in view of the law laid by the Hon'ble Supreme Court in the case of **Nar Singh Vs. State of Haryana** reported in **(2015) 1 SCC 496** and the decision of this Court in the case of **Gobind Singhal & others** (supra), a judgment of conviction would be liable to be held to have been vitiated if the accused is not given a proper

opportunity to respond to all the incriminating circumstances brought on record by the prosecution side if it can be shown that such omission has resulted in serious prejudice being caused to the interest of the accused. The accused is entitled to a fair opportunity to explain the inculpatory evidence available against him while recording his statement under Section 313 Cr.P.C. Such a recourse is necessary so as to give a fair opportunity to the accused to furnish explanation with regard to each such incriminating evidence sought to be relied upon by the prosecution for establishing the charge brought against the accused. However, the question is, having regard to the peculiar facts and circumstances of the case, can it be said that merely because all the incriminating circumstances had not been put to the accused while recording his statements under Section 313 Cr.P.C., any prejudice has been caused to him? The answer to the said question, in our opinion, has to be in the negative. This we say so for the following reasons.

25. *Firstly*, the defence side had declined cross-examination of the PW-5, who is an eye-witness to the occurrence. Therefore, if the testimony of PW-5 had remained intact, there is no scope for the accused to question the veracity or correctness of the testimony of PW-5 while recording his statement under section 313 Cr.P.C. nor can the accused plead any prejudice on account of the fact that the evidence of PW-5 was not put to him so as to give him an opportunity to respond in that regard.

26. *Secondly*, the prosecution was armed with the confessional statement of the accused (Ext-5), which appears to have been recorded by the Magistrate after following proper procedural formalities including providing sufficient time and

opportunity for reflection to the accused. Therefore, notwithstanding the retraction of the confession, we find no valid reason to discard the confessional statement of the accused.

27. *Thirdly*, the defence side had also declined the cross-examination of other key witnesses viz., PWs-1, 3 and 4. Therefore, the accused/appellant cannot allege that any prejudice has been caused to him for not putting the testimony of these witnesses to him while recording his statements under section 313 Cr.P.C.

28. *Fourthly*, while recording his statement under Section 313 Cr.P.C. the accused had admitted of having gone to the Police Station with the dao but there is no explanation as to why, he had gone to the Police Station with the dao if he had not committed the offence.

29. For the foregoing reasons, we are of the unhesitant opinion that based on the evidence available on record, the learned trial court was wholly justified in convicting the appellant under Section 302 of the IPC and sentencing him to undergo rigorous imprisonment for life. Accordingly, we hold that there is no merit in this appeal. The appeal is accordingly dismissed.

Send back the LCR.

JUDGE

JUDGE

Comparing Assistant