JAYANTA SIL

v.

STATE OF ASSAM

(Criminal Appeal No. 1345 of 2007)

AUGUST 4, 2010

[HARJIT SINGH BEDI AND C.K. PRASAD, JJ.]

Penal Code, 1860:

s.302 – Deceased accompanied by accused and co-accused– Accused assaulting deceased by a sharp cutting weapon, resulting into his death – Acquittal by trial court of both – Conviction of accused by High Court – HELD: The view taken by trial court was not justified – It has completely misread the implication of the evidence given by five witnesses, three of them were virtually eye-witnesses and two of them totally independent – The prosecution evidence is further corroborated by the Doctor's evidence – PW.1 is the wife of the deceased –Admittedly she had no animus against the accused and had been attracted to the place after hearing her husband's cries – The occurrence took place on the road opposite the house of the deceased – The presence of PWs. 5 and 6 cannot also be doubted – The deceased as well as these two witnesses had attended the 'Shradh' feast and the murder took place while they were returning home – The statements of these three witnesses are further corroborated by the statement of PWs 2 and 3 to whom PW.1 had given the information and told them that the accused and the co-accused had murdered her husband – Statement of PW.11 is equally important and there is absolutely no doubt that his statement with regard to the visit of the accused to his house late at night with a request that he be allowed to stay on cannot be disbelieved – This was indeed a strange request as the accused and PW.11 belonged to the same village and there

A *is no plausible explanation as to why the accused chose to stay for the night in the house of PW.11 and not to return to his own house a short distance away – Appeal dismissed – Code of Criminal Procedure – Appeal against acquittal.*

B *Mahendra Pratap Singh vs. State of Uttar Pradesh* **(2009) 11 SCC 334 – cited.**

Case Law Reference:

(2009) 11 SCC 334 cited para 6

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1345 of 2007.

From the Judgment & Order dated 08.12.2006/05.01.2007 of the High Court of Gauhati in Govt. Criminal Appeal No. 33 D of 1998.

Soumyajit Pani (for Sunil Kumar Jain) for the Appellant.

Nevneet Kumar (for Corporate Law Group) for the Respondent.

E

The following order of the Court was delivered

ORDER

This is a statutory appeal arising out of the judgment of the F High Court dated 5th January, 2007.

The prosecution story is as under:

At about 10.00 p.m. on 28th August 1994 Jayanta Sil the appellant and Dimbeswar Sil (since acquitted) were returning G from the house of Kripa Das after attending a feast. They were also accompanied by the deceased Kandarpa and as the three were near the house of the deceased on PWD Road the appellant assaulted the deceased with a sharp cutting weapon. Hearing the cries of the deceased, the complainant, PW.1-

H

Bhadrata Das, the wife of the deceased, came out from her house and saw the accused running away. Her shouts attracted several other persons to the spot including Mridul Das-PW.5 and Daya Chand-PW.6 who too saw the accused running away. A

It also appears that soon after the incident Biswajit Das-PW.2 and Uday Dutta-PW.3 also reached the place from their houses some distance away and they too were told by PW.1 as to what had transpired. The evidence further is that Jayant, the appellant herein, rushed to the house of Nisikanta-PW.11 in the same village and requested him to let him stay for the night and when he left early the next day, PW.11 saw that he had left behind a khukri and a torch. The appellant and Dimbeshwar were accordingly brought to trial for an offence punishable under Sec.302 read with Section 34 of the IPC. The Trial Court on a consideration of the evidence held that the statement of PW.1 could not be taken at its face value as there were discrepancies in her statement made in the FIR vis.-a-vis. the statement in Court and it appeared that she had not in fact seen the incident nor had seen the accused running away after committing the murder. Likewise it was held that the statements of PW.5 and PW.6 could not be believed as they were not eye-witnesses and were not clear as to the exact place where the incident had happened as there appeared to be some uncertainty as to whether it had taken place outside the house of the deceased or on the road opposite the gate. The Trial Court also opined that it was not believable that an accused would hang around long enough so that he could be identified by PWs 5 and 6 as this was against normal human conduct. It was further held that the story with regard to the recovery of a torch and the khukry from the house of PW.11 could not be believed more particularly as the weapon had not been sent to the laboratory to find out if it bore any bloodstains. B C D E F G

The Trial Court accordingly acquitted the accused.

An appeal was thereafter taken to the High Court. The High Court has, by the impugned judgment, upheld the judgment of H

A acquittal with respect to Dimbeswar Sil but has reversed the judgment qua the appellant and convicted and sentenced him herein for an offence punishable under Section 302. The High Court has held that there was no reason whatsoever to disbelieve PW.1 or PWs. 5 and 6 as they had no animus against
B the accused. The High Court also observed that positive prosecution story was that the appellant had used a cutting weapon to cut the neck of the deceased and the medical evidence was that the major structures in the neck including the carotid artery and jugular vein, the trachea etc. had been cut
C through and through.

We have heard the learned counsel for the parties. We see that PW.1 is the wife of the deceased. Admittedly she had no animus against the appellant and had been attracted to the place after hearing her husband's cries for help. We have also
D seen the site plan and find that the occurrence took place on the road virtually opposite the house of the deceased. In this situation it would make no difference if it was near the gate or on the main PWD road as it is the admitted position that the incident had happened right outside the house belonging to the
E deceased.

The presence of the PWs. 5 and 6 cannot also be doubted. The deceased as well as these two witnesses had attended the Shradh feast and the murder had taken place as all three
F were returning from that place. We have also gone through the evidence of PWs 5 and 6 and find that there is no suggestion of any kind of animus or rancour between the appellant and them. The statements of these three witnesses are further corroborated by the statement of PWs 2 and 3 to whom PW.1
G had given the information and told them that the appellant and Dimbeshwar had murdered her husband. The statement of PW.11 is equally important even if the recovery of the torch or the alleged murder weapon is ruled out there is absolutely no doubt that his statement with regard to the visit of the appellant
H to his house late at night with a request that he be allowed to

stay on cannot be disbelieved. This was indeed a strange request as we find that the appellant and PW.11 belonged to the same village and there is no plausible explanation as to why the appellant chose to stay for the night in the house of PW.11 and not to return to his own house a short distance away. A

Mr. Soumyajit Pani the learned counsel for the appellant has however cited *Mahendra Pratap Singh vs. State of Uttar Pradesh* [(2009) 11 SCC 334] to contend that if two views were possible on the evidence and the Trial Court had taken one in favour of an accused the High Court would ordinarily not be justified in interfering in the matter. It has been pleaded that the Trial Court had on a deep consideration of the evidence taken a decision and acquitted the accused and a contrary opinion was thus not called for. As against this learned State counsel has pointed out that it was equally well settled that while dealing with an appeal against acquittal, the High Court was fully justified in reappraising the evidence and to interfere if the view taken by the Trial Court was not possible on the evidence and was on the contrary perverse and not to do so would amount to a miscarriage of justice, and that the interests of the accused as well as the interest of the State and the prosecution must be balanced in such matters. B C D E

From a perusal of the judgment of the Trial Court we find that the view taken by the Trial Court was not justified on the evidence. The Trial Court has completely misread the implication of the evidence given by five witnesses, three of them were virtually eye witnesses and two of them being totally independent. The prosecution evidence is further corroborated by the Doctor's evidence that the neck had been almost severed from the body by a cutting weapon such as a khukri. F G

Accordingly, we dismiss the appeal.

R.P. Appeal dismissed.