

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,
SONITPUR, ASSAM

Sessions Case No. 164/2016

u/s 447/326/302/34 IPC

(Arising out of GR Case No. 873/2013)

State of Assam

-vs-

1. Smti Barsati Kurmi
2. Sri Sukru Kurmi
3. Sri Mohan Kurmi

..... Accused persons

Present: Sri Dipankar Bora, MA, LL.M., AJS,
 Additional Sessions Judge, FTC,
 Biswanath Chariali, Sonitpur.

Committed by:
 Learned JMFC, Biswanath Chariali

Advocates Appeared:-

For the prosecution: Ms. J. Kalita, learned Addl. P.P

For the defence : Mr. B. Das, learned Advocate

Dates of recording Evidence: 06.06.2018, 27.02.2019, 09.05.2019.

Date of Argument : 09.05.2019.

Date of Judgment : 09.05.2019.

JUDGMENT

1. The prosecution case in brief is that on 16.12.2013 the informant Smti Gita Kurmi lodged an FIR with the OC, Biswanath Chariali PS stating inter alia that on 15.12.2013 at about 7 PM, the accused Sunil Kurmi, Borsati Kurmi, Sukru Kurmi and Mohan Kurmi entered into the verandah of their house, being armed with dao, axe, lathi and assaulted her husband Rakesh Kurmi, as a result of which her husband died instantly. She further stated that when Chandan Kurmi tried to save his father, the accused persons struck him with a dao which caused grievous injury on his person and he had to be admitted to the Biswanath Chariali Civil Hospital.
2. Receiving the same, the police registered a case and investigated the matter. After investigation, the police submitted chargesheet against the three accused persons along

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with one Juvenile, Sunil Kurmi u/s 447/326/302/34 IPC.

3. In due course the present three accused persons appeared before the court of learned Judicial Magistrate, 1st Class, Biswanath Chariali, wherein the copies of the relevant documents were furnished to them. As the offence charges u/s 302 IPC is exclusively triable by the Court of Sessions, the case was committed, which was later made over to this court for disposal.
4. After appearance of the accused persons before this court and upon hearing both the sides on the point of charge, taking note of the materials furnished u/s 173 CrPC, as my learned predecessor found grounds for presuming that the accused persons had committed offences u/s 447/326/302/34 IPC, the charges were accordingly framed against them, which on being read over and explained, they pleaded not guilty.
5. During trial, the prosecution examined five witnesses in all including the Medical Officer as PW 5. Looking into the evidence as adduced by all the prosecution witnesses as examined the prosecution including the informant PW 1, the prosecution declined to examine the Investigating Officer contending that further evidence would not strengthen its case. Taking note of the materials on record, the prosecution evidence was closed. As no incriminating evidence was found against the accused persons, their examinations u/s 313 CrPC was dispensed with. The case was thereafter, argued by both the sides.

Points for determination

- i) Whether the accused persons on the day of the alleged occurrence in furtherance of their common intention committed criminal trespass by entering into the house compound of the informant with intent to assault of her husband?
- ii) Whether the accused persons in furtherance of their common intention voluntarily caused grievance hurt to the victims, namely, Rakesh Kurmi and Chandan Kurmi with sharp cutting weapon?
- iii) Whether the accused persons on the day of the alleged occurrence in furtherance of their common intention committed murder of Rakesh Kurmi by knowingly or intentionally causing his death?

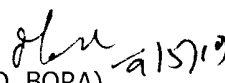
Discussion, Decision and Reasons thereof

6. PW 1 is the informant, Smti Gita Kurmi, who is the wife of the victim, Rakesh Kurmi. She stated that the occurrence took place on 15.12.2016. She was not sure about the year in which the incident took place. She stated that the accused Borsati Kurmi, Ramesh, Mohan and Sunil had a quarrel over land dispute with her husband on that day and assaulted him. She stated that she did not know as to by whom her husband was assaulted as she was in her house at that relevant time. Her son Chandan Kurmi too sustained injury on his person.

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- She thereafter lodged an FIR, which she proved that as Ext. 1. In her cross-examination, she stated that the incident took place in the house of Borsati Kurmi where Dhaneswar Kurmi, Anju Kurmi, Ramesh Kurmi, Renu Kurmi, Kalpana Kurmi and Krishna Kurmi stay with him. She further stated that she has no knowledge as to by whom her husband was assaulted.
7. PW 2 Bablu Tanti, PW 3, Parama Sahani stated that they went to the place of occurrence after hearing 'halla' and found the victim Rakesh lying dead with blood. He heard that the victim had quarrel with the accused persons. They have no knowledge as to by whom the victim was assaulted.
 8. PW 4, Sri Dhaneswari Kurmi stated she has no knowledge about the said occurrence. She also heard that both the sides had indulged in a quarrel.
 9. PW 5 is the Medical Officer, Dr. Jogen Ch. Bey proved the post mortem report of the victim Rakesh Kurmi as Ext. 2. According to him, the death of the victim was caused due shock and hemorrhage as a result of injuries sustained. He stated that all the injuries were anti-mortem in nature and the injuries were caused by heavy sharp cutting weapon. He in his cross-examination stated that he did not mention the age of the injuries he found on the dead body of the victim.
 10. On perusal of the case record, we find that the son of the victim Rakesh Kurmi, namely Chandan Kurmi, who according to the FIR and PW1 sustained injury in that incident, was neither made a witness by the Investigating Officer nor his medical injury report, if any, has been collected. Further, we find no other witnesses stating that Chandan had sustained any injury in the said occurrence. This makes the FIR and evidence in that regard of PW1, who is not an eye witness, doubtful. We find PW2 stating that he did not hear anyone other than the victim Rakesh sustaining any injury in that incident.
 11. Thus from the evidence as discussed above, we do not find any material against the accused persons to connect them with the offences charged against them. The prosecution has failed to prove its case. As such I acquit the above named accused persons from the offences charged against them and set them at liberty forthwith. The provision of Sec. 437-A CrPC is not complied after taking note of the evidence on record. A copy of the judgment be forwarded to the District Magistrate, Sonitpur in compliance with the sec. 365 Cr.P.C. The case is disposed of.

Given under my hand and seal of this court on this the 9th day of May, 2019.


(D. BORA)

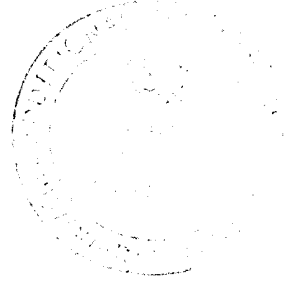
Additional Sessions Judge, FTC,
Biswanath Chariali, Sonitpur, Assam.

ADDITIONAL SESSIONS JUDGE
SONITPUR DISTRICT COURT

ANNEXURE

Witnesses examined by the Prosecution:

PW1- Smti Gita Kurmi
PW2- Sri Bablu Tanti
PW3- Sri Parama Tanti
PW4- Smti Dhāneswari Kurmi
PW5- Dr. Jogen Chandra Bey (M.O.)



Exhibits proved by the prosecution witnesses:

Ext.1- FIR
Ext.2- Post-mortem Report of the victim

Witnesses examined by the Defence:

None.

Documents exhibited by the Defence:

None.

None
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A/3/1/19/19
Bassant/1/1/19/19