

GAHC010117202019



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

Case No. : CRL.A(J)/43/2019

RADHANATH TANTI
JORHAT

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. MRINMOY DUTTA, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

:: PRESENT ::

HON'BLE MR. JUSTICE SUMAN SHYAM
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mr. M. Dutta,
Amicus Curiae.

For the Respondent : Ms. B. Bhuyan,
Senior Advocate/
Addl. Public Prosecutor,
Assam.
Mr. J. Das, Advocate.

Date of Hearing : 05.01.2023.
Date of Judgment : 10.01.2023.

JUDGMENT AND ORDER (CAV)

(Parthivjyoti Saikia, J)

Heard Mr. M. Dutta, learned Amicus Curiae appearing for the appellant. Also heard Ms. B. Bhuyan, learned Senior Counsel/Addl. Public Prosecutor, Assam assisted by Mr. J. Das, Advocate, learned counsel appearing for respondent State.

2. This appeal is preferred against the judgment and order dated 06.12.2018 passed by the Addl. Sessions Judge (FTC), Jorhat in Sessions Case No.56/2016 whereby the appellant was convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and with fine with default stipulations.

3. On 16.11.2015, Sri Gopi Tanti had lodged an FIR before police alleging that on the previous night i.e. on 15.11.2015, his brothers Radhanath Tanti (the appellant) and Jagannath Tanti had a quarrel and thereafter, Radhanath Tanti confessed before him that he had killed Jagannath Tanti by hitting him on his head with a *metate* (grinding stone).

4. The dead body of the deceased was subjected to post-mortem examination. The doctor opined that the cause of death was due to comma as a result of the injuries sustained on the head. The doctor further opined that the injuries were ante- mortem and caused by blunt force impact.

5. On conclusion of investigation, police filed the *charge sheet*.
6. In course of trial, the prosecution side examined as many as 8(eight) witnesses including the police investigating officer and the doctor who had performed post-mortem examination upon the dead body of the deceased. The defence plea is of total denial. Finally, on the basis of the evidence on record, the trial court arrived at the impugned finding.
7. We have carefully gone through the prosecution evidence as well as the impugned judgment.
8. The first prosecution witness to be examined is the informant Gopi Tanti (PW-1). He has stated in his evidence that the appellant and the deceased used to reside in houses situated at about 50 meters away from his house. Gopi Tanti further stated that he did not know how his brother, the deceased died. He has quoted one Chandan Tanti (PW-2) as telling him that the appellant and the deceased had a quarrel at night and on the next morning, the appellant had told him that he had killed the deceased. Gopi Tanti has stated that he along with the PW-2 immediately went to the police station and lodged the FIR (marked as Ext-1.). Gopi Tanti also gave a statement under Section 164 CrPC which is marked as Ext.3.
9. During cross-examination, Gopi has stated that his deceased brother Jagannath Tanti was suffering from epilepsy and on frequent occasions, he sustained epileptic fits. Gopi Tanti has stated that Jagannath Tanti used to call whenever he had epileptic fits. Gopi Tanti has disclosed that at the relevant time of occurrence he did not hear any hue and cry though the house of the deceased is situated very near

to his house.

10. The second prosecution witness is Chandan Tanti (PW-2). He has stated in his evidence that one morning the appellant came to his house and told him that he was sleeping with his brother (deceased) at night and in the morning, his brother did not wake up. According to Chandan Tanti, the appellant wanted him to come to his house to see the deceased. Accordingly, Chandan Tanti went to the house of the appellant. When he reached the house of the appellant, a lot of people had already gathered there. In the meantime, the PW-1 also arrived there.

11. Chandan Tanti has stated that in front of everybody, the appellant confessed that he had killed the deceased by the *metate*. Chandan Tanti further disclosed that he noticed that the head of the deceased was cracked. Chandan Tanti had given a statement under Section 164 CrPC and he proved the statement as Ext.4.

12. During cross-examination, Chandan Tanti has stated that the house of the appellant and the deceased are adjacent to each other and the appellant has his family in his house. Chandan Tanti has expressed his ignorance about any ailments of the deceased.

13. Deepali Tanti, the wife of PW-1 is the third prosecution witness. She has stated in her evidence that next morning of the day of occurrence, she came to know about the incident from PW-2, who informed her about it. PW-2 reportedly told her that the appellant and the deceased had a quarrel that night. Deepali Tanti has stated that she had seen the dead body of the deceased lying inside his house and at that time, there

were injuries on the back side of the head.

14. During cross-examination, Deepali Tanti has stated that the deceased was suffering from epilepsy and he used to consume lot of alcohol.

15. The fourth prosecution witness is Ramesh Sarak (PW-4). This witness has stated that the appellant is his brother-in-law and on the day of occurrence, he went to the house of the appellant along with his wife and there he saw the dead body of the deceased with injuries on his person.

16. The witness Ramesh Sarak was declared hostile because he had resiled from his earlier statement made before police. He stated before police that the appellant had killed his younger brother by hitting his head with a *metate*. But during his cross-examination by the prosecution counsel, he denied the fact.

17. In his cross-examination by the defence counsel, he has stated that the deceased Jagannath was suffering from epilepsy.

18. The fifth prosecution witness is Sankar Chandra (PW-5). He is the Scientific Officer of the Forensic Department. In his evidence has has proved his report and thereby stated that the *metate* contained blood of the deceased.

19. The sixth prosecution witness is Prahallad Singh (PW-6). He is a resident of an area where the appellant and the deceased used to stay. He has stated that one day he noticed a gathering of people in front of the house of the appellant and out of curiosity, he also went there.

Prahallad Singh has stated that the dead body of the deceased was lying in the forecourt of the house of the appellant.

20. During his cross-examination, Prahallad Singh has stated that he did not know how the deceased died. Prahallad Singh further stated that he had heard that the deceased was suffering from epilepsy and on one occasion, he had collapsed in the market. Prahallad Singh disclosed that the deceased used to drink heavily and was often found lying on the road.

21. The seventh prosecution witness is the police investigating officer (PW-7) and he spoke about the investigation.

22. The eighth prosecution witness is the doctor who had conducted post-mortem examination upon the dead body of the deceased.

23. We have given our anxious considerations to the submissions made by the learned counsel of both sides.

24. The trial court accepted the extra-judicial confession made by the appellant and on the basis of that, arrived at the impugned finding.

25. [In Sahoo v. State of U.P.](#) AIR 1966 SC 40, it was held that 'an extra-judicial confession may be an expression of conflict of emotion, a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime.'

26. The Supreme Court in *Arul Raja v. State of Tamilnadu*, (2010) 8 SCC 233 ruled thus :

“55. In view of the above case law, it is made clear that an extra-judicial confession is

a weak piece of evidence. Though it can be made the basis of conviction, due care and caution must be exercised by the courts to ascertain the truthfulness of the confession. Rules of caution must be applied before accepting an extra-judicial confession. Before the court proceeds to act on the basis of an extra-judicial confession, the circumstances under which it is made, the manner in which it is made and the persons to whom it is made must be considered along with the two rules of caution: first, whether the evidence of confession is reliable and second, whether it finds corroboration."

27. Reverting to the case in hand, an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused.

28. Extra-judicial confess is always a weak piece of evidence. There is neither any rule of law nor of prudence that evidence furnished by extra-judicial confession cannot be relied upon unless corroborated by some other credible evidence. However, for acceptance of extra judicial confession, it must be established by cogent evidence, as to what were the exact words used by the accused. Such a confession may be used only as a corroborative piece of evidence.

29. The appellant allegedly confessed about his guilt to PW-2 Chandan Tanti when he was in the company of some other persons. Those persons were not examined by the prosecution. The PW-2 Chandan Tanti did not reproduce the exact words used by the appellant. His evidence remained not corroborated by any prosecution witnesses.

30. The appellant might have stayed together in the same house with the deceased but the evidence of Chandan Tanti (PW-2), regarding extra-judicial confession by the appellant, has not been corroborated by any other evidence. An extra-judicial confession, like any other fact, is also required to be proved by cogent and reliable evidence. The uncorroborated testimony of a witness is not sufficient for conviction of an accused. For this reason, we have reasons to hold that the uncorroborated evidence of Chandan Tanti cannot be accepted in its face value.

31. The learned trial court has erred while accepting the uncorroborated evidence of PW-2 Chandan Tanti.

32. This Court is of the opinion that the prosecution has failed to prove the charge brought against the appellant beyond all reasonable doubt. There is a thick cloud of doubt about the veracity of the prosecution case against the appellant. Naturally, the benefit of doubt must be given to the appellant.

33. The appeal is allowed. The impugned judgment is hence set aside accordingly.

34. The appellant Radhanath Tanti is acquitted from this case on benefit of doubt. Presently he is lodged in the judicial custody, so he will be set at liberty forthwith.

35. Before parting with the record, we record our appreciation for the learned Amicus Curiae for assisting this Court. Registry is directed to pay the remuneration allowed by the rules to the learned Amicus Curiae.

Send back the LCR.

JUDGE

JUDGE

Comparing Assistant