

CASE NO.:
Appeal (crl.) 1165 of 2005

PETITIONER:
Sheo Prasad Bhor @ Sri Prasad

RESPONDENT:
State of Assam

DATE OF JUDGMENT: 08/01/2007

BENCH:
G.P.MATHUR & A.K. MATHUR

JUDGMENT:
J U D G M E N T
W I T H

Criminal Appeal No, 1272 of 2005 (Jaharlal Bhor Vs. State of Assam) & Criminal Appeal No. 27 of 2007 @ Special Leave Petition (Crl.) No. 1169 of 2006 (Manik Keot Vs. State of Assam)

A.K. MATHUR, J.

Leave granted in S.L.P.(Crl) No.1169 of 2006.

These appeals are directed against the Judgment and Order dated 2.4.2005 passed by learned Single Judge of the Gauhati High Court (High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Nizoram and Arunachal Pradesh) whereby learned Single Judge has dismissed the appeals of the accused persons and confirmed the conviction and sentence of the accused persons.

Brief facts giving rise to these appeals are that on 8.6.1991, Smt. Rani Begum lodged a first information report that her husband, Rehmat Ali went out of the house around 8.00 a.m. for fishing and around 11.00 a.m. she was informed by Mina Begum that her husband had been killed by accused Manik Keot, Brajanath Kurmi and Jaharlal Kurmi and the dead body was packed into a gunny bag and thrown into a river. The police registered a case and during investigation the dead body was recovered from the river and thereafter it was sent for post-mortem examination. On completion of investigation, a case was registered against the accused persons under Sections 147, 302, 201 of the Indian Penal Code read with Section 149 of the Indian Penal Code (for short, I.P.C.). On completion of trial, learned Sessions Judge recorded conviction under Sections 147, 149, 304 Part II and 201, I.P.C. against the accused persons and sentenced them to suffer rigorous imprisonment for six years and to pay a fine of Rs.2000/- each, in default to suffer further imprisonment for two years. The trial court found that it was not necessary to record any separate sentence under Sections 147/149/201, I.P.C. and sentenced the accused persons under Section 304, Part II, I.P.C. only as it was observed that it was sufficient to meet the ends of justice. Aggrieved against this order a joint appeal was filed before the High Court. Learned Single Judge of the High Court confirmed the conviction and sentence of the accused appellants.

It may be mentioned here that during the pendency of appeal, appellant Champalal Bhor and Brajnath Kurmi expired, therefore, the appeal against these two appellants stood abated.

In the present appeals we are concerned with the accused-appellants, Manik Keot, Sheo Prasad Bhor and Jaharlal Bhor.

We have heard learned counsel for the parties and have perused the records. Learned counsel for the appellants has taken us to the evidence of the witnesses and tried to persuade us that all the witnesses who have been examined by the prosecution were not worthy of credence as they have improved their statements as given under Section 161 of the Code of Criminal Procedure (for short, Cr. P.C.) and under Section 164 Cr.P.C. as well as during the trial. Therefore, learned counsel for the appellants submitted that these witnesses i.e. P.Ws. 2,4,5,6, and 7 are not reliable.

We have gone through the statements made under Sections 161, 164 Cr.P.C. of these witnesses and before the trial court, after going through the statements, we are of opinion that the approach of the learned Single Judge of the High Court appears to be justified. So far as P.W.2- Faizul Hussain is concerned, he has named accused Manik Keot and Jaharlal Bhor. P.W.3 has also named accused Manik Keot and Jaharlal Bhor in the Court though not before the Police and not before the Magistrate. P.W.4 has named accused Sheo Prasad Bhor, Champalal Bhor and Jaharlal Bhor. P.W. 6 has also alleged that Champalal Bhor, Manik Keot and Sheo Prasad Bhor were lifting Rehmat Ali from the spot and were dragging him to the bank of the river. He has also stated that accused Jaharlal also gave a baitha blow to the deceased and accused Champalal Bhor gave a dagger blow and when he tried to intervene, he was threatened by accused Sheo Prasad Bhor. Similarly, P.W.7 has also mentioned that accused Sheo Prasad Bhor was there and participated in the assault. He also mentioned the name of Jaharlal Bhor before the Magistrate and the court. His statement was sought to be controverted by P.W.9 - Investigating Officer. Small contradiction and omission are natural when body of persons attacked deceased. One has to only assure that there should not be over implication. After review of statements by both the courts below have correctly appreciated the testimony of witnesses. We have also perused the statements made by the witnesses, it is clear that some took part in the assault while others actively assisted them. When charge under section 149, I.P.C. is there, it is not necessary that each one should be assigned independent part played in the beating. If it is found that one of them was a member of the unlawful assembly and that unlawful assembly assaulted the deceased which ultimately caused the death of the deceased, then all who were members of the unlawful assembly can be held liable. Having regard to the facts and circumstances of the case the view taken by the trial court convicting accused appellant under Section 304 (II) read with Section 149 cannot be said to be bad. The High Court has rightly observed that it was a case under Section 302, I.P.C. but since there was no appeal preferred by the State, therefore, High Court did not interfere with the conviction of the appellants. Be that as it may, we are satisfied that the learned Single Judge as well as the trial court has correctly appreciated the testimony of the witnesses and there is no ground to interfere in these appeals. Consequently, the appeals are dismissed.