

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM &
ARUNACHAL PRADESH)

CRIMINAL APPEAL 244/2015

Baser Ali Khan

-versus-

The State of Assam & Others.

BEFORE

HON'BLE THE CHIEF JUSTICE MR. AJIT SINGH
HON'BLE MR. JUSTICE MANOJIT BHUYAN

Advocates for Appellant	::	Mr. B. Islam Mr. A.A. Mondal
Advocates for the Respondents	::	Mr. P.P. Baruah, P.P., Assam Mr. M. Phukan, Addl.P.P, Assam
Date of Hearing	::	04.01.2017
Date of delivery of Judgment	::	04.01.2017

JUDGMENT & ORDER

(Manojit Bhuyan, J)

1. The sole appellant Baser Ali Khan has been convicted for committing offence under Section 302 of the Indian Penal Code and sentenced to rigorous imprisonment for life with fine and default stipulations for causing the death of his wife Firoza Khatun, aged about 18 years by inflicting cut injuries caused by sharp weapon i.e. a *dao*.

2. Ejahar (Ext.-5) in the case was lodged by Saber Ali (PW1) on 05.03.2004 stating that his younger sister Firoza Khatun was married to the appellant about 7 (seven) months prior to the incident. On

05.03.2004 at around 5 A.M., the appellant on instigation by other accused, killed his sister by hacking her on various parts of her person with dagger. The said ejarah was registered as Bilasipara P.S. Case No. 28/2004 under Sections 302/34 IPC. Investigation commenced, charge memos were drawn, autopsy was done on Firoza Khatun and eventually charge sheet was submitted against the appellant. The case was committed to trial.

3. During the trial, the prosecution examined as many as 12 (twelve) witnesses, including the official witnesses who are Biswajit Goswami (PW-8), Dr. N.K. Choudhury (PW-9), Syed Moktabar Rahman (PW-11) and Bibu Mazumdar (PW-12). According to PW-9 who is the Medical Officer and had performed autopsy, recorded as many as 7 (seven) injuries on the person of Firoza Khatun, the particulars of which are (1) one lacerated wound of 10" X 2" X 1" size present on both sides of face. (2) Another lacerated wound of 10" X 2" X 1" size present on left side of face (3) One cut wound of 2" X ½" X 1" X 1" size present on both sides of face. (4) Rt. Ear lobe is cut size 1" X ½". (5) One cut injury size 3" X 1" X 1" on left leg. (6) One cut injury of 3" X 1" X 1" size on left leg & (7) left middle, ring & index fingers are cut. In the opinion of the Medical Officer, death was due to injury sustained by the deceased caused by sharp weapon. Ext-4 is the Post-Mortem Report. PW-11 deposed as the Investigating Officer in the case and stated that Firoza Khatun had sustained stab injuries and that he had also seized a *dao* from the house of the appellant. The Inquest Report which had been prepared by PW-8 as the Circle Officer stationed at Bilasipara also recorded that he found cut injuries on the body of Firoza and that the said injuries had not been caused by tin sheets.

4. Saber Ali (PW-1), who is the brother of Firoza and the informant in the case deposed that he saw the appellant and his father assaulting

his younger sister. Mohammed Chandullah Sk. (PW-2), being the father of Firoza also deposed to the extent that he had seen the appellant fleeing from the house taking a *dao* with him.

5. Arguments advanced by the counsel for the appellant is that the injuries sustained by Firoza had been caused by tin sheets and the same had happened as the appellant's house got gutted by fire on the previous evening. It is submitted that the death of Firoza was accidental in nature and, therefore, the appellant could not have been held guilty.

6. Testing the arguments so advanced, the evidence on record do not reveal that any explanations had been made to that effect by way of defence in the statement of the appellant recorded under Section 313 Cr.P.C. The nature of injuries as recorded by the Medical Officer also do not go to support the plea taken by the appellant before this Court. It is clearly discernible from the evidence of PW-8 and PW-11, together with the findings recorded in the Post-Mortem Report (Ext.-4) that the injuries found on the body of Firoza were caused by a sharp weapon. A *dao* had been seized from the house of the appellant.

7. As regards the deposition of PW-1 and PW-2 who had deposed of either having seen the appellant assaulting Firoza and/or having seen the appellant running away with a *dao*, the same cannot be taken at its face-value. The deposition made by PW-1 and PW-2 before the Court are apparently improved versions having regard to their statements made under Section 161 Cr.P.C. on the very date of the incident i.e. 05.03.2004. The case as laid out by the prosecution is that the appellant had caused the death of his wife Firoza in the secrecy of his own house. Under such circumstances, the appellant was under an obligation to give a plausible explanation to the cause of her death in his statement under Section 313 Cr.P.C. In the instant case, the

appellant had offered no explanation whatsoever with regard to the cause of death of his wife in his statement under Section 313 Cr.P.C. Statements made is that he had been falsely implicated and he is innocent.

8. In *Trimukh Maroti Kirkan v. State of Maharashtra*, reported in (2006) 10 SCC 681, the Apex Court have held that in a case where an offence like murder is committed in secrecy inside the house, the initial burden of the prosecution to establish the case would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and without offering any explanation. It was held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance indicating that the accused is responsible for commission of the crime. The Apex Court also held that in a case based on circumstantial evidence where no eye-witness account is available, one of the principles of law that must be kept in mind is that when an incriminating circumstance is put to the accused and the said accused offers no explanation, then the same becomes an additional link in the chain of circumstances in support of the guilt of the accused. The ratio laid down in *Trimukh Maroti* (supra) has also been reiterated in the case of *State of Rajasthan v. Kashiram*, reported in AIR 2007 SC 144 and recently in the case of *Gajanan Dashrath Kharate v. State of Maharashtra*, reported in (2016) 4 SCC 604.

9. In the instant case death occurred to Firoza in the appellant's house. The post-mortem report confirmed that Firoza sustained 7(seven) injuries caused by sharp weapons. The correctness of the

post-mortem report was not subjected to any challenge by the appellant nor any suggestion had been made to Dr. N.K. Choudhury (PW-9) that the injuries on Firoza was caused by tin sheets. The statement of the appellant under Section 313 Cr.P.C. is altogether silent of any plausible explanations being given as regards the cause of death of Firoza.

10. Having regard to the evidence on record and the law laid down by the Apex Court in the aforesaid decisions, we hold that it was the appellant alone who was responsible and had caused the death of his wife Firoza Khatun in his house. The arguments advanced by the counsel for the appellant are wholly without merit. The prosecution having been able to prove the guilt of the appellant beyond all reasonable doubt, this Court finds no cogent reason to make interference with the conviction and sentence of the appellant. In view thereof, this appeal being devoid of merit, stands accordingly dismissed.

Lower Court records be sent back forthwith.

JUDGE

CHIEF JUSTICE

sds