

**SUPREME COURT OF INDIA**

MD.Ali Haider

Vs.

State of Assam

CrI.A.No.1645 of 2007

(Harjit Singh Bedi and Deepak Verma JJ.)

02.12.2009

**ORDER**

1. Leave granted.

2. This appeal is directed against the judgment of the Assam High Court dated 14/12/2006 whereby the conviction of the appellants recorded by the Sessions Judge under Section 302/34 of the IPC has been confirmed by the High Court.

3. As per the prosecution story at about 11.30 p.m. on the night of 11th October, 1999 four persons, the appellants herein, entered the house of Khalilur Rehman and committed his murder. The motive for the offence apparently was a land dispute between the deceased and the appellants. The incident was witnessed by Atabjan Nessa PW.1 and Saida Khatun PW.3, the wife and daughter of the deceased respectively. The alarm raised by them attracted several other persons including Md. Moinul Haque (PW.6) a relative and neighbour of the deceased and his father Dilowar (PW.2) and several other persons as well. On the information received by Md. Moinul Haque (PW.6) he rushed to the police station and lodged the report a short time later.

4. Sadananda Hazarika (PW.8) the Investigating Officer and the Station House Officer of Police station Abhayapuri reached the place of incident early next morning and made the necessary inquiries. As he suspected that the four appellants had been involved in the murder he made a search for them but without success. He also seized various items relevant to the investigation from the place of incident and sent the body for the post-mortem examination which was carried out on the next day and it is found that the death had been caused by the severance of the neck of the deceased. On the completion of the investigation the appellants were charged for an offence punishable under Sec.302/34 of the IPC and as they pleaded not guilty they were brought to trial.

5. The trial Court relying on the evidence of PWs. 1 and 3, the wife and daughter of the deceased, as corroborated by the evidence of PWs.2,4,5,6,7 and 8 held that the case against the accused appellants had been proved. The plea of the defence that the FIR and the inquest

proceedings recorded on the next day did not contain the names of the assailants was explained away by observing that PW.1 had been rendered unconscious at the time of the murder and had not been in a position to give all details as to the incident. For arriving at this conclusion the trial Court relied on the evidence of Moinul Haque (PW.6) who had deposed that PW.1 had been rendered unconscious and had remained in that position till the next morning. The Court also found that the four assailants had arrived in the residential house of the deceased at dead of night to settle scores over the land dispute and as such the common intention to commit murder had also been proved.

6. An appeal was thereafter taken to the High Court which has by its judgment dated 14/12/2006 confirmed the decision of the trial Court. It is in this situation that these two matters are before us.

7. Mr. A.H.Laskar, the learned counsel for the appellants, has raised primarily one issue before us. He has pointed out that the observation of the trial Court and the High Court that the statements of PWs.1 and 3 had precedence over any other evidence and could not be ignored under any circumstance was erroneous as the parties were well known to each other being immediate neighbours but had still not been named in the FIR and inquest proceedings.

8. The learned counsel seeks to draw the inference that though the incident did happen at the time alleged but the assailants had not been identified at that time and it was thereafter on suspicion that they had been roped in.

9. Mr. JR. Luwang, the State counsel has, however, urged that the statements of PWs. 1 and 3 could not be disbelieved for the simple reason that the incident had happened in the residential house and the presence of the family at dead of night was natural and that there was no occasion to involve the present appellants in a false case.

10. We have considered the arguments of the learned counsel. PW.1 is the star witness in this case. As per her statement in Court many people had gathered at night soon after the incident on the alarm raised by her including PW.2 Dilawar the scribe of the FIR, Siddique Ali (PW.4) and Moinul Haque (PW.6) the persons who had actually lodged the FIR. PW.1-further stated that the complete details of the incident had been conveyed by her to PW. 2 and PW.6 before the FIR had been lodged. She further stated that the Police had also reached the place of incident during the night itself and recorded the statements of several other witnesses. She further went on to say that soon after the police arrived in the village they took Moksed, Sabed, Sattar, Gafur and others to the police station but they were subsequently released and the present accused appellants were arrested thereafter. We find that in the face of this evidence that the information with regard to the assailants had been conveyed by PW.1 to PW.6 yet the FIR and the inquest report referred to unknown assailants, proves that the assailants had not been identified by PWs. 1 and 3. We also see from the record that the inquest report had been signed by all the persons who had arrived at the place of murder soon after the incident on the alarm raised by PW.1. These persons are PW.4 PW.6, PW.7 PW.2 and PW.5.

11. It is therefore apparent that up to the stage of recording of the inquest proceedings on the 12th October, 1999, the names of the assailants were not known. The statement of PW.3 is also extremely relevant in so far as the defence is concerned. She stated that PW. 2 was the first to arrive in the house and that she had told him every thing and that he had then left the house for a short while and returned to that place again. She further stated that her statement had been recorded on the night of the incident itself. PW.3 (who was at the time of the incident about 15 years of age) also claimed to have conveyed all information to PW. 2 but we find that though he was the scribe of the FIR, the names of the killers were not entered therein. We have also gone through the evidence of PW.6 the first informant. He is the only person who deposed that the names of the assailants had not been divulged by PW.1 for the reason that she was unconscious as her husband had been brutally murdered. As already pointed out above, PW.1 has not for a moment stated that she had been unconscious and on the contrary she testified that she had informed PW.2 and PW.6 about the names of the assailant and given other details of the incident to him.

12. The defence has also relied on the evidence of PW.7 Md. Sofiul Haque, the neighbour of both the parties. As a matter of fact this witness, though cited by the prosecution, had virtually destroyed the prosecution story but was not declared hostile. He categorically stated that PW.1 did not disclose the names of the assailants either before him or to the others. This glaring contradiction further strengthens Mr. Laskar's submission that the prosecution was groping around and on suspicion had involved the appellants. In view of the above observations we are of the opinion that the statements of PWs. 1 and 3 cannot be relied upon.

13. The trial court as also the High Court have referred to the fact that the accused had absconded. For this observation reliance has been placed on the statements of PW.8 the Investigating officer. We find from his evidence that PW. 8 had made a very casual search for the accused.

14. On the contrary it has come in the evidence of Md. Sofiul Haque (PW.7) who testified in his cross-examination that after he had arrived at the place of incident the four appellants too had arrived at that place. The prosecution story that the accused had absconded is also, therefore, clearly in doubt. We, accordingly, allow these appeals, set aside the judgments of the courts below and order the acquittal of the appellants.

15. We are informed that the appellants in Crl.A.No.1645/2007 are on bail; their bail bonds shall stand discharged. Appellant Amjad Ali, who is in custody, is directed to be released forthwith if not required in any other case.