

DISTRICT : GOLAGHAT.

IN THE COURT OF THE SESSIONS JUDGE AT GOLAGHAT.

Ref. :- Sessions Case No. 38/2003.

G.R. Case No. 559/1999..

U/S. 302 of IPC and Section 27(2) of Arms Act.

The State of Assam Prosecution.

Vs.

Sri Arun Kurmi. Accused.



Dates of charge 12.08.2008.
Dates of evidence 20.08.2008, 27.01.2009,
16.03.2009, 27.07.2009,
28.08.2009, 20.10.2009,
12.03.2010, 03.03.2011,
26.04.2012, 27.11.2012.
Date of argument 08.10.2013.
Date of judgment and order 08.11.2013.

APPEARANCES :-

For the prosecution Mr. M.K. Buragohain,
Special Public Prosecutor, Golaghat.

AND

For the accused person Mr. B. Tanti,
Advocate, Golaghat.

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PRESENT :

SHRI T. LOHAR,
SESSIONS JUDGE,
GOLAGHAT.

JUDGMENT AND ORDER :

1. The prosecution case, in brief, is that on 20.8.1999, at around 11 A.M., in the compound of "Urbashi Cinema Hall", Golaghat before starting the Morning Show in the said Cinema Hall, turmoil/hue and cry broke out among the gathering on hearing the sound of fire shot and one Ranjan Nath of Kabarugaon under the District of Golaghat among the gathering died by the said gun shot injury.

2. The O/C of Golaghat police station on receipt of the written ejahar, Ext-2 from Sri Ananda Borthakur, the Ticket Seller of the said cinema Hall, registered a case vide Golaghat P.S. Case No. 218/1999 u/s 302 of IPC, read with Section 27 of Arms Act. During investigation, police seized one empty cartridge of 9 mm. on the bottom of which found written 9 mm. ZZ OK 97 which was found lying at the place of occurrence on 20.8.1999. Police seized one 9 mm. browning service pistol bearing No. 16120790 with one empty megazine by seizure list dated 22.8.1999 on being produced by Armourer Habildar, Debeswar Dowarah, the Megazine Guard of Police Reserve, Golaghat as Material Exhibits vide M.R. No. 120/99, Zimma No. 2/2000. During investigation, police seized the following arms and ammunition on 5.9.1999 on being produced by Armourer Habildar Debeswar Dowarah of Megazine Guard, Police Reserve, Golaghat -

- (i) One 9 mm. browning pistol, bearing No. 16237182 with one empty megazine ;
- (ii) One 9 mm. browning pistol bearing No. 16236901 with one empty megazine ;
- (iii) One 9 mm. browning pistol bearing No. 16236793 with one empty megazine ; and
- (iv) 15 rounds of 9 mm. ball ammunition (lives) on the bottom of which written as 9 mm. ZZ OK 97

under seizure list Ext-5 vide M.R. No. 131/1999. Further, the police seized one daily arms and ammunition issue Register of Megazine Guard, Police Reserve, Golaghat commencing the period from 24.2.1999 to 22.8.1999. the said register has been exhibited as M. Ext-7.

3. On the prayer of the police, the learned Chief Judicial Magistrate, Golaghat by order dated 23.8.1999, in G.R. Case No. 559/1999, sent the aforesaid arms and ammunition to the Director of Forensic Science Laboratory,



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Kahilipara, Guwahati for examination. From the order dated 24.1.2000 of the learned Chief Judicial Magistrate, Golaghat as found in the order sheet of the said G.R. Case No. 559/1999, it is found that the report has been received from the Forensic Science Laboratory, Kahilipara, Guwahati. The Senior Scientific Officer of the Forensic Science Laboratory, Kahilipara, Guwahati, at the time of FSL examination of 9 mm. pistol's cartridge which was seized on 20.8.1999 was marked with Ext-'A' and one 9 mm. browning pistol No. 16236901, marked with Ext-'B 2'. On examination, the Senior Scientific Officer found the firing pin impression on the test fired cartridge which was marked by him as Ext-'A' at the time of examination, fired through Ext-'B2", i.e. browning pistol bearing No. 16236901 was to similar to the Ext-'A', i.e. exhibited cartridge case of Memo No. GJ 2176/99, dated 23.8.99 and opined that Ext-'A' was fired by Ext-'B2'. Police found that on 19.8.1999, the said browning pistol No. 16236901 was issued to the constable/64 Sri Arun Kurmi along with 12 Nos. of ammunition in the arms and ammunition issue Register (M. Ext-5). During investigation, police collected the post mortem report of the deceased and after completion of investigation, police found that constable-64 Arun Kurmi shopt dead Ranjan Nath on 20.8.1999 at 11 A.M. by the browning pistol No. 16236901 at Urbashi Cinema Hall compound, Golaghat and submitted the charge sheet under section 302 of IPC/27 of Arms Act for trial against the accused person.

4. The case has been received on commitment by the learned Judicial Magistrate, First Class, Golaghat. My learned predecessor Sri S.P. More, Sessions Judge, Golaghat after completion of trial, was satisfied to hold that the prosecution had failed to bring home the charge levelled against the accused Arun Kurmi beyond all reasonable doubt and accordingly, acquitted him by awarding the benefit of doubt by the judgment and order dated 5.4.2006.

5. Against the said judgment and order, the Hon'ble Gauhati High Court by its judgment and order dated 7.8.2007 in Crl. Revision (Suo moto) No. 174 of 2007 was pleased to set aside the said impugned judgment and order dated 5.4.2006 passed by the then learned Sessions Judge, Golaghat. The Hon'ble Gauhati High Court in Para No.23 of the judgment and order dated 7.8.2007 is pleased to observe in the following way -

“ In view of our conclusion that there was gross miscarriage of justice in this case, we deem it appropriate to set aside the



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judgment under revision and remit the matter back to the Sessions Court at Golaghat for a fresh trial of the accused. The Sessions Court is further directed to frame appropriate charges in the light of this order and on the basis of the material, which is already in existence and on record of the Court.”

6. On receipt of the case record with the copy of the judgment and order dated 7th August, 2007 In Criminal Revision (Suo moto) No. 174 of 2007 from the Hon'ble Gauhati High Court and on appearance of the accused person, my learned predecessor Smti. D. Borbora, the then Sessions Judge, Golaghat framed the fresh charges in the following way which was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried -

First -“That you on or about the 20.8.1999, at about 11 A.M., in front of Urbashi Cinema Hall at Bengenakhowa, Golaghat town under Golaghat police station committed murder by causing the death of Ranjan Nath with a 9 mm. browning pistol bearing No.16236901 ; and thereby committed an offence punishable u/s 302 of IPC and within the cognizance of the Court of Sessions.”

Secondly - “ That you on or about the same day, time and place did illegally possesses the 9 mm. browning service pistol bearing No. 16236901 ; and thereby committed an offence punishable u/s 27 of the Arms Act and within the cognizance of the Court of Sessions.”

7. The prosecution examined 11 witnesses including one Investigating Officer. During the trial of this case, one Investigating Officer, namely – Arun Kr. Sahu expired. Therefore, his evidence could not be recorded. He has investigated into the case and subsequently, another Investigating Officer, namely – S.I. Probin Ch. Das after perusal of the case diary, was satisfied to hold that the investigation had already been completed and accordingly, he found the prima facie material for the offence u/s 302 of IPC/27 of Arms Act against the accused person to proceed with the trial and hence, he submitted the charge sheet.



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8. During trial, the learned defence counsel on behalf of the accused person was asked as to whether he intends to cross examine the said police officer Probin Ch. Das to prove the contradictions with reference to the case diary to which he declined. The said fact has been reflected in the order sheet dated 12.9.2013 in connection with this Sessions case. After conclusion of the prosecution evidence, the accused person has been examined u/s 313 of Cr.P.C. The plea of the accused is one of total denial. He declined to adduce defence evidence.

9. Heard argument of both the sides.

10. The points for determination in this case are -

“ Whether the accused person on 20.8.1999, at about 11 A.M., in front of “Urbashi Cinema Hall” at Bengenakhowa, Golaghat, committed murder by causing the death of Ranjan Nath with a 9 mm. browning pistol bearing No.16236901 ?

Whether the accused person illegally possessed the 9 mm. browning service pistol bearing No.16236901 ?”



DISCUSSIONS, DECISION AND REASONS

THEREOF :

11. Let me discuss the evidence on record to see as to whether the prosecution is able to prove the above points.

12. P.W.1 Sri Shyamanta Bora was the friend of Ranjan Nath (since deceased) and both of them were students of the same college. According to his evidence, on the date of incident, i.e. on 20.8.1999, their class was not held due to death of one staff of the said college and therefore, they left for “Chित्रलेखा Cinema Hall” by riding together on a bicycle, and from there, they went to the Cinema Hall of Bengenakhowa at Golaghat for enjoying the cinema. On reaching there, Ranjan Nath (since deceased) entered into the cinema Hall compound asking him (P.W.1) to wait with the said bicycle on the other side of the road within the vicinity of the said cinema Hall. In the mean while, Ranjan Nath (since deceased) came out from the cinema Hall and again he entered into the compound of the said cinema Hall asking him (P.W.1) to wait. P.W.1 further deposed that he heard the sound of gun firing. The gathering were running

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hither and tither . The nearby shops keepers had spontaneously down the shutters of their shops. P.W.1 searched his friend Ranjan Nath, but he did not find him. Then he asked one passersby on the street. The said passersby told him that one boy lying in the compound of the said cinema Hall. Then he went there and found his friend Ranjan Nath lying in a pool of blood placing his face on the downwards. Then P.W.1 rushed to the house of the deceased Ranjan Nath at Bongaon and while proceeding on the way, he informed the incident to one "Samabai" shop and he along with one uncle of the deceased, went to Golaghat police station. But they did not find the deceased there and then they went to Golaghat Civil Hospital and found the dead body of Ranjan Nath there covered by a piece of white cloth. He (P.W.1) could not say who had shot his friend dead.

13. From the evidence of P.W.1 Shyamanta Bora, it is found that the deceased Ranjan Nath went to the cinema Hall with him to enjoy the cinema during the relevant period and said Ranjan Nath shot dead by fire arms in the cinema Hall's compound.

14. P.W.2 Sri Ajit Paul, who had a betel-nut shop situated near the cinema Hall, heard the sound like bursting of wheel in the compound of the cinema Hall. He has been declared as hostile witness as he resiled from the previous statement as recorded u/s 161 of Cr.P.C.

During cross examination by the prosecution, P.W.2 has admitted that the police had seized one 9 mm. empty cartridge under Ext-1 the seizure list, upon which Ext-1(1) is his signature. The said fact has not been disputed by the defence. In cross examination by the defence, he has admitted that the police took him to the place where the deceased lying.

15. P.W.3 Sri Ananda Borthakur has been examined on commission. According to his evidence, he was the employee of the said cinema Hall. At the time of occurrence, he was busy with the Booking counter of the said cinema Hall. He lodged the ejahar Ext-2 with Golaghat police station alleging that one unknown person had shot dead another unknown person in the cinema Hall compound and later on, he came to know that the said deceased was hailing from Kabarugaon. P.W.3 has further deposed that he heard the sound like bursting of wheel when he was busy with the Booking counter of the Cinema Hall. He on seeing running of the gathering hither and tither, came out towards the steps of the Hall and saw one person lying with writhing in the cinema Hall compound. When other staff of the cinema Hall came out, then he informed the police about the incident over telephone. He (P.W.3) saw while police took



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away the said injured person from there. Police seized one empty cartridge from the place of occurrence on the same day under Ext-3 the seizure list, upon which Ext-3(1) is his signature.

15. From the evidence of P.W.3, we find that he could not say who had fired the gun shot. He could identify the accused Arun Kurmi when the police brought him in the cinema Hall. He witnessed when the police seized one empty cartridge from the place of incident.

In cross examination, P.W.3 stated the same version as he had stated in the examination in chief.

16. P.W.4 Sri Debeswar Duwarah, now S.I. of police was working as Armourer at Golaghat Police Reserve on 22.8.1999. On that day, TSI, Arun Kr. Sahu (since deceased) of Golaghat police station seized one 9 mm. browning service pistol bearing No. 16120790 with empty megazine from Megazine Code of Golaghat Police Reserve. At that time, Reserve Officer Sri Dhanapati Deka was present. Ext-4 is the seizure list upon which Ext-4(1) is his signature(P.W.4). Again the same TSI Arun Kr. Sahu on 5.9.1999, seized 3 Nos. of 9 mm. browning service pistols along with 15 Nos. of 9 mm. cartridges upon which ZZ OK 97 were written. The numbers of all the aforesaid seized 3 Nos. of browning pistols are -

- (i) 16237182 along with empty megazine ;
- (ii) 16236901 along with empty megazine ; and
- (iii) 16236793 along with empty megazine.

At that time, Reserve Officer Sri Dhanapati Deka was also present. TSI Arun kr. Sahu prepared the seizure list vide Ext-5, upon which Ext-5(1) is his signature. M.Ext.-1 is the browning pistol No. 16236793. M. Ext-2 is the browning pistol bearing No. 16237182 and M. Ext-3 is the browning pistol bearing No. 16236901. Further, M. Ext-4 is the browning pistol bearing No. 16120790 which was seized on 22.8.1999. On 25.8.1999, while the said TSI Arun Kr. Sahu seized 5 Nos of ammunition of 9 mm. pistol from Megazine Code of Police Reserve, Golaghat, the Reserve Officer Sri Dhanapati Deka was also present there. Ext-6 is the seizure list, upon which Ext-6(1) is his signature. On 22.8.1999, the said TSI Arun Kr. Sahu seized one daily Arms and Ammunition Issue and Receipt Register from the Megazine Guard of Police Reserve, Golaghat commencing from the period of 24.2.99 to 22.8.99 under the seizure list Ext-9, upon which Ext-9(1) is his signature. M. Ext-5 is the said



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