

A CHAITU GOWALA AND ANOTHER

v.

THE STATE OF ASSAM

(Criminal Appeal No. 325 of 2020)

B SEPTEMBER 07, 2022

[M. R. SHAH AND KRISHNA MURARI, JJ.]

C *Penal Code, 1860 – ss. 302 and 149 – Appellants alongwith 70 other accused persons were accused of murdering the Managing Director of a company in which they were working – Prosecution examined three eye witnesses who identified the appellants – Trial Court convicted appellants and sentenced them to life imprisonment – High Court confirmed the conviction – On appeal, held : On considering the disposition of the eye witnesses nothing is forthcoming that appellants caused any injury to the deceased and participated in any manner in commission of the offence – There were some disputes with respect to wages and appellants were present at the incident site as office bearers of the labour union – It has come on record that appellant-Chaitu Gowda told something to the labourers in their own language following which the labourers became very agitated – But nothing on record what was uttered by the accused – In absence of any concrete evidence, the appellants cannot be convicted u/s.302 IPC with the aid of s.149 IPC – Impugned judgment of High Court and trial court quashed and set aside.*

F **Allowing the appeal, the Court**

G **HELD: On considering deposition of the eye witnesses, PW3, PW4 and PW6, nothing is forthcoming that the appellants caused any injury on the deceased and/or participated in any manner in commission of the offences for which they are convicted. If the entire evidence and the deposition of the eye witnesses are scanned, it appears that in fact the appellants were present there as office bearers of the Union. There were some disputes with respect to wages. Even as per the deposition of PW3, on being called, the appellants entered into the office room but soon both of them came out and told the assembled labourers**

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that the Managing Director would distribute their dues and asked them to go to the place where dues were to be distributed. Despite the same, the labourers protested that they would not accept anything other than the full dues and they started shouting. The other labourers – co-accused snatched the carbine of the PSO and to that the deceased – Managing Director asked the appellant – Chaitu Gowala as to why the weapon of PW3 was snatched, he being a public servant. It has come on record that on this, the appellant – Chaitu Gowala told something to the labourers in their own language following which the labourers became very agitated. Nothing is on record what was uttered by the accused – Chaitu Gowala. Therefore, in absence of any concrete evidence that the appellants attacked and/or caused any injury to the deceased and/or even the PSO and in absence of any evidence what was uttered by the appellants – accused in their own language and in absence of any evidence that the appellants instigated the labourers – others co-accused, the appellants cannot be convicted for the offence under Section 302 IPC with the aid of Section 149 IPC. The conviction of the appellants, for the offences for which they are convicted is unsustainable. [Para 5][193-B-H; 194-A]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 325 of 2020.

From the Judgment and Order dated 04.12.2018 of the High Court of Gauhati at Gauhati in Criminal Appeal No. 62 of 2013.

Manish Goswami, Rameshwar Prasad Goyal, Advs. for the Appellants.

Ms. Diksha Rai, Ms. Ragini Pandey, Debojit Borkakati, Advs. for the Respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 04.12.2018 passed by the Division Bench of the Gauhati High Court in Criminal Appeal No. 62/2013, by which the High Court has dismissed the said appeal and has confirmed the conviction of the appellants herein – Chaitu Gowala and Ajay Ahari - original accused

A Nos. 2 & 1 respectively, convicting them for the offences under Sections 302/392/148/323/149 IPC and sentencing them to undergo life imprisonment, original accused Nos. 2 & 1– Chaitu Gowala and Ajay Ahari respectively have preferred the present appeal.

2. The appellants herein along with other co-accused (70 in numbers) were tried for the offences under Sections 302/392/148/323/149 IPC for having committed the murder of one Rupak Kumar Gogoi, Managing Director of the Company in which the accused persons were working. At the relevant time, the appellants herein were the President and Secretary of the Union. The prosecution examined PW3, PW4 and PW6 as eye witnesses who had identified the appellants and others accused. On conclusion of the trial and on appreciation of evidence, the trial Court acquitted 57 accused, however, convicted 13 accused including the appellants herein for the aforesaid offences and sentenced them to life imprisonment and also awarded different sentences for other offences. That the conviction of the thirteen accused including the appellants herein came to be confirmed by the High Court, by the impugned judgment and order.

2.1 In all, six accused filed the present appeal/special leave petition. However, by order dated 25.03.2019, the special leave petition qua petitioner Nos. 3 to 6 came to be dismissed. Therefore, the present appeal is for the remaining accused, namely, Chaitu Gowala and Ajay Ahari – original accused Nos. 2 & 1 respectively.

3. Learned counsel appearing on behalf of the accused has vehemently submitted that as such there is no evidence against the appellants that they caused any injury to the deceased and/or participated in commission of the offences for which they are convicted. It is submitted that in fact the appellants were there as office bearers of the Union and when the talks were going on, the labourers gathered and attacked. It is submitted that in fact the appellants tried to control the situation, however, the mob attacked the deceased – Managing Director who succumbed to the injuries. It is submitted that there is no evidence that the appellants herein even instigated the mob. It is submitted that even considering the deposition of the eye witnesses as it is, it cannot be said that the appellants have committed any offence for which they are convicted, more particularly Section 302 IPC. Learned counsel appearing on behalf of the appellants has taken us to the deposition of the relevant witnesses.

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4. On the other hand, learned counsel appearing on behalf of the State while opposing the present appeal has submitted that it has come on record from the deposition of eye witnesses PW3, PW4 and PW6 that the appellants who were the office bearers came out when the mob came and then they spoke something in their own language. It is submitted that therefore the appellants are rightly convicted with the aid of Section 149 IPC. Learned counsel appearing on behalf of the State has taken us to the deposition of PW3, PW4 and PW6.

5. We have heard learned counsel appearing on behalf of the respective parties at length. We have gone through in detail the judgment and order passed by the trial Court as well as the impugned judgment and order passed by the High Court. We have also considered in detail the deposition of the relevant witnesses, more particularly PW3, PW4 and PW6, who were the eye witnesses. On considering deposition of the eye witnesses, nothing is forthcoming that the appellants caused any injury on the deceased and/or participated in any manner in commission of the offences for which they are convicted. If the entire evidence and the deposition of the eye witnesses are scanned, it appears that in fact the appellants were present there as office bearers of the Union. There were some disputes with respect to wages. Even as per the deposition of PW3, on being called, the appellants entered into the office room but soon both of them came out and told the assembled labourers that the Managing Director would distribute their dues and asked them to go to the place where dues were to be distributed. Despite the same, the labourers protested that they would not accept anything other than the full dues and they started shouting. The other labourers – co-accused snatched the carbine of the PSO and to that the deceased – Managing Director asked the appellant – Chaitu Gowala as to why the weapon of PW3 was snatched, he being a public servant. It has come on record that on this, the appellant – Chaitu Gowala told something to the labourers in their own language following which the labourers became very agitated. Nothing is on record what was uttered by the accused – Chaitu Gowala. Therefore, in absence of any concrete evidence that the appellants attacked and/or caused any injury to the deceased and/or even the PSO and in absence of any evidence what was uttered by the appellants – accused in their own language and in absence of any evidence that the appellants instigated the labourers – others co-accused, we are of the opinion that the appellants cannot be convicted for the offence under Section 302 IPC with the aid of Section 149 IPC. We are of the firm

A view that the conviction of the appellants, namely, Chaitu Gowala and Ajay Ahari for the offences for which they are convicted is unsustainable.

6. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court qua the appellants herein and that of the trial Court convicting the appellants Chaitu Gowala and Ajay Ahari for the offences under Sections 302/392/148/323/149 IPC are hereby quashed and set aside. However, the impugned judgment of the High Court and that of the trial Court convicting the other accused are already confirmed. The appellants herein – Chaitu Gowala son of Karma Gowalla and Ajay Ahari son of Late Samro Ahari, original accused Nos. 2 & 1 respectively are hereby acquitted for the offences for which they were tried and convicted. They be released forthwith, if not required in any other case.

7. The instant appeal is allowed accordingly.

Bibhuti Bhushan Bose
(Assisted by : Shubhanshu Das, LCRA)

Appeal allowed.