

GAHC040008152019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : CrI.A. 22/2019

1:TILOK ROY BHOWMICK
S/O LT. ANJAN ROY BHOWMICK, RESIDENT OF TEZPUR, RUBBER BAGAN,
PS SADAR THANA TEZPUR, PO TEZPUR, DISTRICT SONITPUR, ASSAM.

VERSUS

1:THE STATE OF A.P. AND ANR.
THROUGH THE PUBLIC PROSECUTOR, AP.

2:SRI JUREN DEKA
S/O SHRI SUREN DEKA
MAUZA
KALITAPATRA
PS KALAIGAON
DIST. UDALGURI
ASSAM

Advocate for the Petitioner : MsS V Darang

Advocate for the Respondent : P P of AP

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

07.04.2022

(A.M. Bujor Barua, J)

Heard Ms. D Yoka, learned Amicus Curiae for the appellant, and Mr. T. Ete, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. An enquiry report submitted by Sri Ashok Kumar Jha, Sub Inspector of Police of Doimukh Police

Station dated 27.07.2017 resulted in the registration of DMK/PS/C No. 32/2014 u/s 302 IPC. The enquiry report states that the informant had conducted an enquiry regarding killing of one unknown person at 15 miles DMK-Sagalee road and on a visit to the place of occurrence, he found a deadbody with cut injuries because of which the deceased had died. The investigation resulted in the framing of charge against the accused/appellant Tilok Roy Bhowmick resulting in five charges.

3. The first charge being that the accused/appellant and Ridip Nath had hatched a criminal conspiracy to rob a vehicle from a Guwahati based travel agency and murders the driver in furtherance with another person Dadar Lorah (absconder) and thereby committed an offence punishable u/s 120(B) of IPC. The second charge is that on 26.07.2014, the accused/appellant had committed robbery of an Innova car bearing No. AS 01EC-8481 after killing the driver in connivance with Dadar Lorah (absconder) and thereby committed an offence u/s 392 IPC. The third charge is that the accused/appellant and Dadar Lorah (absconder) had kidnapped the deceased Phukan Deka in order to murder him after committing a robbery of his car and thereby committed an offence u/s 364 IPC. The fourth charge is that on the given date, place and time, the accused/appellant and Dadar Lorah (absconder) committed the murder of the deceased in order to commit the robbery of his car and thereby committed an offence u/s 302 IPC. The fifth charge is that the accused/appellant had committed the offence in furtherance of a common intention with Ridip Nath and Dadar Lorah (absconder) and thereby committed an offence u/s 34 IPC.

4. PW-6 Ashok Kumar Jha, who is the informant in his deposition stated that while he was posted as the duty officer in the Doimukh police station, he received a call stating that one deadbody was lying on the road in the Doimukh-Sagalee Road 15th mile. On receipt of the information and on the instruction of the Officer-in-Charge of the police station, PW-6 along with a police team went to the place of occurrence and brought back the deadbody and suo moto registered a case. The witness also visited the place of occurrence, drew a rough sketch map, took the photographs and also held inquest and thereafter the deadbody was taken to the General Hospital, Naharlagun for postmortem and after the postmortem as nobody came to claim the body, the police completed the last rites. Some time back, the wife of the deceased informed that the deceased used to ply a commercial taxi from Guwahati to Itanagar. This witness also states that in the meantime, a similar offence had taken place at Tawang, wherein also the accused/appellant Tilok Roy Bhowmick was arrested on the allegation of hiring a commercial vehicle and thereafter killing the driver of the vehicle and after that sell off the vehicle. The accused/ appellant was brought to Doimukh police station for interrogation, where he admitted his guilt

and he stated that he took the vehicle from Guwahati to Nirjuli and stayed at hotel Ajin. Thereafter, early in the morning, he took the driver and the vehicle to Doimukh-Sagalee road and murdered the deceased. The witness stated that thereafter he was transferred from Doimukh police station and the investigation was further carried by another Investigating Officer.

5. PW-10 B. Krong is the subsequent Investigating Officer. In his deposition, PW-10 stated that he seized one Silver colour Innova vehicle from SI CA Namcoom of Seppa police station, who in fact had seized the vehicle from Riba Natung. The witness also deposed that as the other accused DadarLorah was absconding for a long time, he has got him declared as a proclaimed offender. The witness stated that during investigation, it was found that the deceased Phukan Deka was a Guwahati based taxi driver of Innova car bearing registration No. AS-01EC-8481, which is a silver coloured vehicle and it was hired by the accused/appellant Tilok Roy Bhowmick for transporting certain clothes from Guwahati to Itanagar. On the evening of 26.07.2014 after staying for the whole day at hotel Ajin at Nirjuli, the accused/appellant Tilok Roy Bhowmick and Dadar Lorah took the driver Phukan Deka to Sagalee-Doimukh road and killed him with adao by striking on his head and neck area. During investigation, it was also found that the accused/appellant Tilok Roy Bhowmick had fled away with the vehicle after committing a similar offence at Lumla Tawang, where he was earlier arrested in connection with Lumla PS Case No. 10/2014 u/s 326/307/392/34 IPC, but his accomplice DadarLorah had fled away. Upon interrogation of the accused/ appellant Tilok Roy Bhowmick, the vehicle having Chasis No. MBI 11JU40074168330613 and Engine No. 2KDU336091 with number plate of AR-01F-0101 was seized by the Seppa police station. After staying the whole day at hotel Ajin at Nirjuli, the accused DadarLorah also arrived there and all of them went to Sagalee-Doimukh road, where the accused Dadar Lorah and accused/appellant Tilok Roy Bhowmick had killed the driver PhukanDeka with a dao and fled away with the vehicle. The vehicle was later taken away by Riba Natung from Dadar Lorah at Seppa as Dadar Lorah was unable to pay a sum of Rs. 2,00,000/- to Riba Natung.

6. PW-1 Tokar Rizi in his deposition stated that he was working as a receptionist in Ajin hotel at Nirjuli. The witness stated that the police had brought the accused/appellant Tilok Roy Bhowmick and had asked whether the said person had stayed in his hotel, to which the witness had given a positive reply. The witness also stated that after checking out of the hotel, the accused/appellant Tilok Roy Bhowmick had called him towards a white or silver colour vehicle parked outside the hotel and from the back side of the hotel, he took out a new shirt and gave it to him.

7. PW-2 Biswajit Das in his deposition stated that he was working as a waiter in Ajin hotel at Nirjuli

when the accused/appellant Tilok Roy Bhowmick along with one of his friend, who was later stated to have been murdered came to their hotel in the morning hour and occupied room No. 107. They consumed alcohol for the whole day in the hotel and in the evening at about 8.00 p.m., both the accused/appellant and the deceased left the hotel. Before leaving, the accused/appellant had given him Rs. 100/- as tip and two bottles of beer. The witness stated that the accused/appellant had told him that he had come from Guwahati and was engaged in some clothes business and could also see that the accused/appellant before leaving had given one piece of clothe from his vehicle to the Manager of the hotel Tokar Riji, who is PW-1. The witness could also identify the photographs of the deceased that it was he who came to the hotel Ajin along with accused/appellant Tilok Roy Bhowmick.

8. PW-3 Dr. Divakar Phinya in his deposition stated that he was working as the Senior Medical Officer cum Forensic Specialist at Arunachal State Hospital, where the Doimukh police had brought one unidentified deadbody of a male person aged about 20-30 years for conducting postmortem and accordingly the postmortem was done. The doctor, who conducted the postmortem found multiple incised chop wounds on the right temporal scalp of head, extending from right frontal border of temporal forehead to midline of head just below external protuberance, measuring 23 x 6 cms. Just above right ear, 8 cms below parietal midline, one cut chop wound of temporal bone measuring 21 x 4 cms was also found. Further an incised chop wound on the right side of the neck measuring 9 x 3 cm below right ear with muscle deep, an incised chop wound on right back of neck with muscle deep, measuring 5 x 2 cms and 4 cms from midline of the back, an incised chop wound on the anterior front neck with the involvement of muscles, blood vessels, trachea and esophagus, measuring 12 x 3 cms just above thyroid cartilage and 7 cms below chin, multiple stab wounds (5 in numbers) on right front chest and from mid chest, elliptical in shaped, measuring over and area of 19 x 14 cms, size ranging from 1 x 2 cms to 1 x 2.5 cms, above nipple level, involvement of muscle and skin were found. The cause of death was stated to be due to shock, hemorrhage and asphyxia resulting from incised chop injuries to the vital organs.

9. PW-4 R. Kholie deposed that while was working as a Sentry at Seppa police station, one silver colour Innova without a number plate with two number plates of silver colour were seized from the possession of Niba Natung.

10. PW-5 Tajang Tayem, who was working as a constable at Seppa police station, on the instruction of the Investigating Officer had accompanied him to the residents of Riba Natung and seized a silver colour Innova vehicle from the possession of Riba Natung.

11. PW-7 Riba Natung in his deposition stated that in the year 2014, the police came and seized one silver colour Innova vehicle bearing No. AR-01F-0101 from his residence. The witness further stated that the said vehicle was taken by him from Dadar Lorah (absconder accused), who was to have repaid him an amount of Rs. 2, 00, 000/-.

12. PW-8 Juren Deka is the younger brother of the deceased Phukan Deka. In his deposition he stated that he saw the accused/appellant Tilok Roy Bhowmick at Ambari police station of Guwahati on being called by the police to identify the photographs of his deceased brother as well as the mobile phone.

13. PW-9 Purna Deka had identified the deceased Phukan Deka from the photographs.

14. As the investigation against the accused/appellant proceeded on the basis of the enquiry report of the police official of Doimukh police station being the PW-6, we propose to examine the evidence of the Investigating Officer. The first Investigating Officer PW-6 Ashok Kumar Jha in his evidence stated that the accused Tilok Roy Bhowmick was arrested after the accused was in the custody of Tawang police in connection with Lumla PS Case No. 10/2014, which in fact is also a case registered for a similar offence that is a commercial vehicle had been robbed prior thereof been murdered and the vehicle was sold off to some person.

15. The second Investigating Officer PW-10 B. Krong in his deposition stated that one silver colour Innova vehicle bearing registration No. AS-01EC-8461 was seized from a person namely Riba Natung. PW-7 Riba Natung in his deposition stated that one silver colour Innova Vehicle bearing registration No. AR-01F-0101 was seized from his residence and the said vehicle was procured by him from Dadar Lorah (absconder accused) inasmuch as, the said person was required to have repaid him Rs. 2, 00,000/-, which he failed to repay.

16. For an effective adjudication to establish the complete chain of events, we also require to have materials that the Innova vehicle bearing registration No. AS-01EC-8481 which admittedly is the vehicle which the deceased Phukan Deka was driving and the Innova vehicle bearing registration No. AR-01F-0101 is the same vehicle. The same can easily be established upon the relevant evidence being produced before the Court that the Engine Number and the Chasis Number of the two vehicles are same. If the said link between the two vehicles can be established, on one hand we have the materials on record that the accused Tilok Roy Bhowmick hired the vehicle AS-01EC-8481 to travel from Guwahati to Itanagar, the driver of which the vehicle the deceased Phukan Deka had been killed and on the other hand, the same vehicle have been seized from the PW-7 Riba Natung and the PW-7 Riba Natung having procured the said vehicle from the accused Dadar Lorah (absconder), the chain of

events to arrive at any conclusion against the accused/appellant Tilak Roy Bhowmick can be established. The link can further be established if necessary evidence as to how the accused Dadar Lorah (absconder) had any link with the accused/appellant Tilak Roy Bhowmick.

17. Another aspect of the matter is that the evidence of the PW-10 B Krong is that the accused Dadar Lorah (absconder) and the accused/appellant Tilak Roy Bhowmick had taken the deceased Phukan Deka to the Sagalee-Doimukh road and killed him with a dao. From such point of view also, further evidence is required as to in what manner the accused/appellant Tilak Roy Bhowmick and the accused Dadar Lorah (absconder) are linked.

18. Another aspect of the matter is that the Investigating Officer PW-10 B Krong in his deposition stated that the accused persons and the deceased stayed in a hotel Ajin at Nirjuli on 26.07.2014 and PW-2 Biswajit Das deposed that they consumed alcohol for the whole day in the hotel and in the evening at about 8.00 p.m. and thereafter, both the accused/appellant Tilak Roy Bhowmick and the deceased Phukan Deka had left the hotel. The information about the death was received by the informant Sub Inspector of Police of Doimukh Police Station at about 10.50 p.m. in the night of 27.07.2014. Detail evidence as to on which date, the accused/appellant Tilak Roy Bhowmick and the deceased Phukan Deka stayed at Hotel Ajin at Nirjuli and left at 8.00 p.m. is not available on record. A further evidence as to on which date, the accused/appellant Tilak Roy Bhowmick and the deceased Phukan Deka were together at the Hotel Ajin would enable the Court to arrive at a more appropriate adjudication.

19. If the accused/appellant Tilak Roy Bhowmick and the deceased Phukan Deka were together up to 8.00 p.m. at Hotel Ajin at Nirjuli on 26.07.2014 and the death is reported at 10.50 p.m. of 27.07.2014, the applicability of the law of last seen together theory would have to be applied from a different perspective. On the other hand, if the accused/appellant Tilak Roy Bhowmick and the deceased Phukan Deka were last seen together up to 8.00 p.m. on the day the incident had taken place, which was reported at 10.50 p.m., the applicability of the law of last seen together theory would have to be applied in a different prospective. From the said point of view, the evidence as to on what date up to 8.00 p.m. the accused/appellant Tilak Roy Bhowmick and the deceased Phukan Deka were seen together would be vital importance.

20. We also take note of that this is a serious offence and if true, the implication thereof would be that the accused/appellant Tilak Roy Bhowmick was once associated with an offence because of which he was at Tezpur Jail and another offence that he is also connected with the offence of killing the driver

and taking away vehicle at Tawang and this would be the third incident of a similar allegation.

21. In the circumstance, it is relevant that all the necessary evidence which is possible to be adduced in respect of the charge against the accused/appellant Tilak Roy Bhowmick be brought on record.

22. In the circumstance, we exercise our power under Section 391 of Cr.P.C, and send the matter back to the Court of learned Sessions Judge, Yupia for recording of further evidence as to on which date, the accused/appellant Tilak Roy Bhowmick and the deceased Phukan Deka were together at Hotel Ajin at Nirjuli. If necessary, by requiring further investigation pertaining to the Guest Register etc. of the Hotel as well as from the PW-1 and PW-2 who had already deposed. The other evidence to be led as to whether the accused Dadar Lorah (absconder) and the accused/appellant Tilak Roy Bhowmick were together so that a link can be established that the two accused were together in the offending vehicle, so as to cause the death of the driver or whether the accused/appellant Tilak Roy Bhowmick knowingly had handed over the deceased to the other person so that the further offence can be caused.

23. The appeal is kept pending for adjudication and to be taken up after the additional evidence as ordered is brought on record.

24. The LCR be returned back to the learned Court of Sessions Judge, Yupia for recording of further evidence and thereafter be re-send to this Court to continue with this appeal.

25. Registry is directed to provide a copy of this order to the learned Sessions Judge, Yupia for doing the needful.

26. List the matter after two months.

JUDGE

JUDGE

Comparing Assistant