
(2018) 04 CAL CK 0135
In the Calcutta High Court
Case No : C.R.A. 340 of 2010

Alauddin Mia & Another

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 30-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 149, 304, 325, 326, 452
Code of Criminal Procedure, 1973 — Section 428

Citation : (2018) 04 CAL CK 0135

Hon'ble Judges : JOYMALYA BAGCHI, J;RAVI KRISHAN KAPUR, J

Bench : Division Bench

Advocate : S. G. Mukherjee, A. K. Maity

Final Decision : Disposed Of

Judgement

Joymalya Bagchi, J.

Perused the report wherefrom it appears that except the appellants no other convicts preferred any appeal against the impugned judgement and order

of conviction and sentence. It appears that the appellants who were sentenced to a term imprisonment are about to complete their sentences. Hence,

though paper books have not been prepared till date, we take up the appeal for hearing dispensing with preparation of paper books.

The appeal is directed against judgement and order dated 11.12.2008 passed by the learned Sessions Judge, Cooch Behar in Sessions Case No.369 of

2007 arising out of Sessions Trial No. 1(6)08 convicting the appellants and one Latif Mia, Abdul Haque and Ajij Mia for commission of offence

punishable under Sections 149/304 Part II of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for eight years each and to

pay a fine of Rs.2,000/- each, in default to suffer imprisonment for six months

more.

The prosecution case, as alleged against the appellants and other accused persons, is to the effect that on 29.9.2006 i.e. 12th Aswin, 1413 B.S. about

10.30/11.00 A.M. one Munni Khatoon, aged about five years, went to attend nature's call on the pathway used by the appellants and other

accused persons. Over such issue, the appellants and other accused persons being armed with lathis and iron rods trespassed into the land of his

brother Ajimuddin and abused him in filthy language. When Ajimuddin raised protest, they cut his banana plants and also assaulted him. Alauddin and

Ajij assaulted Ajimuddin with a dagger on his head and as a result he sustained grievous bleeding injuries. Other accused persons also assaulted him

and as a result of such assault, Ajimuddin suffered bleeding injuries on various parts of his body.

Relations and neighbours intervened whereupon the accused persons ran away. Brother of the victim, Omar Ali took him to Bhanukumari and

thereafter to Toofangang and lastly to Cooch Behar for medical treatment. On the written complaint of Keta Seikh, another brother of the victim,

Baxirhat P.S. Case No. 65 of 2006 dated 30.9.2006 under Sections 452/325/326/34 of the Indian Penal Code was registered against the accused

persons. Upon the death of the victim, Section 304 of the Indian Penal Code was added.

In conclusion of investigation, charge sheet was filed under Sections 325/326/304/34 of the Indian Penal Code against the accused persons. The case

was committed to the Court of Sessions and charges were framed against the appellants and co accused persons under Sections 149/304 Part I of the

Indian Penal Code. They pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined ten witnesses and exhibited a number

of documents. The defence of the appellants and other accused persons was one of innocence and false implication. In conclusion of trial, the learned

Trial Judge by the impugned judgement and order dated 11.12.2008 convicted and sentenced the appellants, as aforesaid.

Learned Public Prosecutor appearing with Mr. Maity, learned Additional Public Prosecutor submits that the evidence on record establishes the guilt of

the appellants beyond doubt. The version of the eyewitnesses is corroborated by medical evidence of P.W.8 and hence, the conviction and sentence

does not call for interference. We have considered the materials on record. P.W. 1, Keta Seikh is the defacto complainant and brother of the victim.

He has supported the prosecution case and has proved the first information report (Ext.1). Wife of the victim has been examined as P.W.6. She

deposed that her daughter Munni had gone to attend nature's call on the pathway used by the accused persons and over such issue the accused

persons trespassed into their land and cut away banana trees. When her husband protested, the accused persons assaulted him with lathi and Alauddin

assaulted her husband with a 'dao' on his head. Her husband was admitted to hospital and died on the following day.

P.W.2 is a co-villager. P.W.1 described him as 'chacha sasur' of the victim. He deposed that there was a quarrel between the parties and over

such issue Alauddin assaulted Azimuddin with a 'dao'. He sustained bleeding injuries and fell down. He was treated at Cooch Behar MJN

Hospital where he breathed his last. P.W.4, Majiran Bibi is the daughter of P.W.2. She has corroborated the evidence of her father. P.W.3, Jabia Bibi

is another eyewitness who has corroborated the prosecution case. P.W.5 is the Pradhan of Mahishkuchi Gram Panchayet. He is a reported witness.

He also deposed that two daos were recovered from the house of Alauddin and Ajij in the course of investigation. He identified the seized alams in

court. He signed on the seizure list (Ext. 2/1). P.W.8 is the post mortem doctor who proved the post mortem report (Ext.6). He found the following

injuries :-

1. One stitched wound seen over the right parietal bone close to the midline in sagittal plane direction 2" in length.

2. One stitched wound seen in the left parietal bone 2" away from the 1st injury measuring 1½" in length.

3. On dissection blood found under-neath the skin.

4. One linear fracture line seen about 2" in length on the right parietal bone.

5. Huge collection of blood seen under the dura comprising the brain. According to the doctor, death was due to shock and haemorrhage from the

above-noted injuries which are ante mortem and homicidal in nature. According to him, injury no.1 and 2 may be caused by sharp cutting weapon

and/or with daos like Material Exhibits I and II. P.Ws.7, 9 and 10 are the police witnesses. P.W.10 is the Investigating Officer of the case who

conducted investigation, seized the weapon of offence from the residence of the appellants and submitted charge sheet.

From the aforesaid evidence on record, we note that there is overwhelming direct evidence of assault upon the victim, Ajimuddin by appellant no.1 on

the head with a dao. Evidence also shows the presence of appellant no.2, Hazrat Ali who actively participated in the assault of the victim along with

other accused persons. The ocular version of P.Ws.1, 2, 3, 4 and 6 are supported by medical evidence of the post mortem doctor, P.W.8. Hence, I am

of the opinion that the conviction recorded in the instant case does not call for interference.

Coming to the sentence imposed on the appellants, I note that the incident occurred in the course of a sudden quarrel due to the fact that the daughter

of the victim had defecated on the pathway of the appellants. It cannot be said that the appellants had acted in a cruel manner upon premeditation or

previous grudge. They also do not have criminal antecedents. Accordingly, I am inclined to modify the sentence and direct that the appellants shall

suffer rigorous imprisonment for the period already undergone and shall pay a fine of Rs.2,000/-each, in default shall suffer imprisonment for six

months more. With the aforesaid modification as to sentence, the appeal is disposed of. Period of detention suffered by appellants during investigation,

enquiry or trial shall be set off against the substantive sentence imposed upon them under Section 428 of the Code of Criminal Procedure. Copy of the

judgment alongwith LCR be sent down to the trial court at once. Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously

after complying with all necessary legal formalities.