
(2011) 01 CAL CK 0038
In the Calcutta High Court
Case No : C.R.A. No. 142 of 2008

Ali Akbar Mondal and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Explosives Act, 1884 — Section 9B

Penal Code, 1860 (IPC) — Section 302, 324, 326, 34

Citation : (2011) 1 CALLT 424 : (2011) 2 CHN 374

Hon'ble Judges : J.N. Patel, C.J; Ashim Kumar Roy, J

Bench : Division Bench

Advocate : Sekhar Kr. Basu, Joymalya Bagchi, Anasuya Sinha, Rajdip Mazumder, Debjani Banerjee, Kushal Mukherjee and Shirsany Bandopadhyay, for the Appellant; Ashimesh Goswami, S.K. Mallick and Amajit De, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Roy, J.—In a sessions trial held before the Learned Additional Sessions Judge, Bongaon, the Appellants being convicted under Sections 302/34 as well as under Sections 324/34 of the Indian Penal code and thereunder sentenced to suffer imprisonment for life and rigorous imprisonment for one year respectively and to pay fine with default clause, have preferred this appeal.

2. The prosecution case in a nutshell run as follows:

3. On March 27, 2006 at about 21 hours while the deceased Khagen Mondal was sitting in the Verandah of his house with his co-villagers, viz., Joydeb Goldar, Monimala Goldar, Tapasi Goldar and his wife Sumitra Mondal, the Appellant in a body came there and started indiscriminately hurling bombs towards them. During such indiscriminate hurling of bombs, one bomb hit Khagen Mondal and his head was blown out and Khagen died instantaneously at the spot, while two Ors. , viz., Monimala Goldar and her daughter Tapasi Goldar, also received bomb burst injuries.

4. Following the aforesaid incident the wife of the deceased Sumitra Mondal lodged a FIR with the Gopalnagar Police Station. Whereupon a case under Sections 302/34 of the Indian Penal Code and u/s 9B of the Indian Explosives Act was registered. After completion of investigation the police submitted charge-sheet under Sections 302/326/34 of the Indian Penal Code and u/s 9B of the Indian Explosives Act.

5. Subsequently the Appellants were placed on trial before the Learned Additional Sessions Judge, Bongaon, North 24 -Parganas to answer charges u/s 302/34, 326/34 of the Indian Penal Code and u/s 9B(1)(b) of the Indian Explosives Act.

6. During the trial the prosecution in order to bring home the charges against the Appellants, relied as many as on 16 witnesses. Out of the said 16 witnesses P.W. 1 Sumitra Mondal is happened to be the defacto-complainant of the case and wife of the deceased Khagen Mondal and is an eye-witness. Similarly, the prosecution examined P.W. 2 Tapasi Goldar, P.W. 3 Monimala Goldar, P.W. 12 Suchitra Mondal, the daughter of the deceased as the eyewitnesses to the occurrence. The P.W. 4 Pabitra Mondal, P.W. 6 Juthika Mondal and P.W. 10 Srabani Mondal were post occurrence witnesses, who claimed to have arrived at the spot being attracted by the sound of explosion of bombs and had seen the accused/Appellants to flee away from the spot. The witnesses P.W. 5 Matin Mondal, P.W. 7 Mobarak Mondal, P.W. 8 Chhamad Kazi, P.W. 11 Joybeb Goldar and P.W. 13 Kamal Krishna Mondal as did not support the prosecution case they were declared hostile. The P.W. 9 Dr. Dipak Maitra held post mortem over the dead body. The P.W. 14 and P.W. 15 are police personnel's and they are formal witnesses. The P.W. 16 is the Investigating Officer of the case and submitted the charge-sheet.

7. However, defence examined no witness and it was the case of the defence that they have been implicated falsely out of political rivalry.

8. The prosecution case that the death of victim Khagen Mondal was homicidal in nature and due to bomb burst injuries has been proved by the P.W. 9 Dr. Dipak Maitra, who held the post mortem on the dead body. The witness in his evidence stated that on examination he found,

(i) Head with brain matters were completely separated from the neck.

(ii) Blackish splinter trauma over chest and shoulder area.

9. According to his opinion the death was due to head injury and was anti mortem and homicidal in nature. The witness in his cross-examination disclosed that such condition of the victim may be caused due to hurling of bombs.

10. The P.W. 6 Sumitra Mondal and the P.W. 12 Suchitra Mondal, the wife and the daughter of the victim Khagen Mondal, are the key witnesses of the prosecution.

11. According to the P.W. 1 Sumitra Mondal, at the time of the incident, she

along with the victim Khagen, P.W. 3 Monimala Goldar, P.W. 2 Tapasi Goldar and P.W. 11 Joydeb Goldar were sitting in the Verandah of their house and were gossiping. At that time she saw Kader Mondal, Appellant No. 3, Saidul Mondal, Appellant No. 2, Hossain, Appellant No. 7, Majid, Appellant No. 4, Yazul, Appellant No. 5, Razzack Mondal, Appellant No. 6, Kartik, Appellant No. 8 and Ors. to enter their courtyard and then hurling bombs at her husband, when her husband being hit by one bomb fell down on the ground and died instantaneously. She further stated the P.W. 3 Monimala Goldar and her daughter Tapasi also sustained serious bleeding injuries due to such bomb attack. The witness identified the Appellants at the dock as the assailants of her husband. According to her further evidence at that time accused Akbar Mondal Appellant No. 1 and Asgar pointed a pistol towards her and threatened her with dire consequences, if she raised any alarm. In the meantime, being attracted by the sounds of bombs and her cry many villagers came to the spot and after sometime police arrived there, when she disclosed the entire incident to the police and gave a complaint in writing. She was also interrogated by the police. According to her the Appellants bore grudges against her husband as he always used to raise protest against their various anti-social activities and previously these Appellants made an attempt on his life.

12. The evidence of the P.W. 1 Sumitra Mondal was vehemently criticized by the learned Counsel appearing on behalf of the defence and he submitted as follows;

(i) The incident took place at a dark night and there was no electricity in the village, therefore identification of the miscreants was practically impossible.

(ii) The witness in the FIR has not disclosed that she along with Monimala, Tapasi and Joydeb were sitting in the verandah of their house and were gossiping.

(iii) The witness has not stated in the FIR that she suddenly went towards her room and then returned to the verandah and in the meantime the incident took place.

(iv) It was not mentioned in the FIR that she saw the Appellants hurling bombs at her husband.

(v) The witness has not mentioned in the FIR that Akbar and Asgar at the point of pistol threatened her not to raise any alarm.

(vi) The witness stated to the Investigating Officer of the case that when the bombs were hurled she was inside the room, thus she was not in a position to say all about the occurrence.

(vii) The witness could not tell whether bloodstained earth was seized by the police from the place of occurrence or not.

(viii) None of the witness has mentioned that the bomb, which hit Khagen Mondal and caused his death was thrown by which particular accused.

(ix) The only accused whose bomb hit the deceased and caused his death shall

be liable u/s 302 of the Indian Penal Code not the Ors. .

(x) The basic ingredient of Section 34 of the Indian Penal Code against the Appellants has not been proved.

(xi) Immediately after the occurrence when police came to the spot a complaint was lodged against some unknown persons and subsequently the said complaint was replaced by the present FIR implicating the Appellants.

13. It is well accepted that FIR is not an encyclopedia of the prosecution case and it is an intimation to the police about the commission of any cognizable offence or cognizable offences so as to set the criminal law into motion. Although the broad outline of the prosecution case is required to be stated in the FIR but absence of minute details is of no consequences. Non-disclosure of minute details in the FIR by itself neither makes the FIR maker wholly unreliable nor the prosecution case. While appreciating the evidence of a witness in a criminal trial specially in case of eyewitness, the maxim *falsus in uno, falsus in omnibus* cannot apply and it is the duty of the Court to take all efforts to shift the grain from the chaff. It is of course true that when a witness is said to have exaggerated in his evidence at the stage of trial and it is found that a part of the evidence is not acceptable that does not mean that remaining part of the evidence to be thrown out. In such a situation, the Court is to be on guard and be careful to scrutinize that part of evidence which is not vitiated by exaggeration and if the same gets corroborated from other evidence on record so that becomes acceptable, may always be relied upon. Even where there is omission in the FIR about some vital facts that would not ipso facto be a ground to reject the other part of the evidence of the informant.

14. Thus, we are of the opinion, in this case the evidence of P.W. 1 Sumitra Mondal is to be approached with great caution instead of discarding the same as a whole. However, while appreciating her evidence this Court must not be oblivious of the fact that she being one of the inmates of the house her presence at the time of incident i.e. in the late evening and at the spot i.e. inside the house is quite natural. It has also to be remembered that her report to the police was made within a few hours after the incident in which her husband was brutally killed and therefore absence of minute details is also very natural.

15. Now, coming to the evidence of the P.W. 1 Sumitra Mondal, we find she never disputed in her cross-examination that there was no electricity in their village and that was a dark night. But at the same time in further cross-examination she categorically stated that they used Hurricane lamp in their house and at the relevant time of the incident their house was lit by Hurricane lamps and her husband was writing in the light of Hurricanes. Therefore, we are unable to accept the contention of the defence that there is no light at the place of occurrence and thus the identification of the Appellants as the alleged miscreants was totally impossible. We further find that the P.W. 3 Monimala Goldar was also cross-examined by the defence on the point of light and during such cross-

examination the P.W. 3 stated that two Hurricane lamps were burning in the verandah, one of which while was blown out under the impact of explosion, the other remained intact and continued to burn. In this connection it may also be noted that the broken Hurricane lamp was seized by the Investigating Officer of the case from the spot during investigation under a seizure list along with the bloodstained earth and the remnants of bombs under a seizure list, Exhibit - 2.

15. It is further contended by the defence that the witness P.W. 1 has not mentioned in the First Information Report that at the time of the incident she and other witnesses, viz., Monimala, Tapasi, Joydeb and the victim were gossiping sitting on the verandah of their house and she went towards their room and thereafter returned to the verandah and also the names of the Appellants as the assailants of her husband. We have very carefully gone through the First Information Report, Exhibit - 4 and we find that the facts that at the time of incident she along with her husband and three other witnesses were gossiping sitting in the verandah as well as the names of the Appellants as the assailants of her husband were very much there in the First Information Report. It is true that there was no mention in the FIR that while gossiping at verandah she suddenly went to her room and then returned to the verandah, when the incident occurred but in our considered opinion such omission is not at all fatal for the prosecution case. Moreover, we find from her evidence that she suddenly went towards their room and then returned to the verandah and saw the incident. Therefore, it cannot be said that the P.W. 1 was although inside their room and returned to the verandah only after the incident was over and thus was not in a position to see and identify the assailants who attacked her husband. It was vehemently argued by the Learned Counsel of the defence that the presence of the P.W. 1 Sumitra Mondal at the time of the incident and at the spot is very doubtful on the face of the evidence of the P.W. 3 Monimala Goldar and the P.W. 12 Suchitra Mondal. It is submitted that the P.W. 3 Monimala Goldar admitted in her cross-examination that she did not notice anyone else while she, her daughter and Khagen Mondal were sitting in the verandah. It was also submitted that the evidence of the P.W. 3 Monimala Goldar that she has not stated to the Investigating Officer of the case that both P.W. 1 and P.W. 12 were in their room was contradicted by the evidence of the Investigating Officer of the case. The Learned defence counsel draws our attention to the evidence of P.W. 12 Suchitra Mondal and submitted according to the said witness she and her mother P.W. 1 came to the verandah hearing the sound of bomb explosions. In this connection it is pertinent to note according to the prosecution witnesses at least 9/10 bombs were hurled and exploded during the incident and hurling of bombs was continued for quite sometime. Therefore, it is the case of the prosecution that at least 9/10 bombs were hurled for quite sometime, thus even accepting the defence contention that when the attacks commenced the P.W. 1 was inside the room with her daughter that would not make it impossible for her to see the rest of the incident after she came out from the room and to identify the attackers, who hurled bombs at her husband. It may also be noted that during her cross-

examination it was suggested to the P.W. 1 that she stated to the Investigating Officer that when the bombs were hurled at her husband she was in the room. Not only such suggestions of the defence was categorically denied by her, it is worthy to mention the investigating Officer of the case was never cross-examined to contradict the witness.

16. Moreover, the incident took place at around 9 p.m. in a village and in the verandah of a house, the P.W. 1 is the wife of the victim, therefore, according to us she is most natural witness and her presence at the spot and witnessing the occurrence cannot be doubted in any manner whatsoever. Furthermore, we are of the opinion the evidence of the P.W. 1 first time in Court that in course of conversation between her husband and other witnesses she suddenly went towards their room and returned and in the meantime the incident occurred, neither improve the prosecution case nor absence of such facts in her report to the police weakened it. On the other hand it depicts her truthfulness.

17. Now, in view of the discussion as above, we do not find any valid reason to doubt the credibility of the P.W. 1 Sumitra Mondal and the facts that the entire occurrence in which her husband was killed by the Appellants was witnessed by her. In this connection it would be very pertinent to refer to the evidence of P.W. 2 Tapasi Goldar. According to her when the bomb was hurled on Khagen Dadu, she, her mother, her father and her Dida, i.e., Khagen's wife were sitting in the verandah. Similar was the evidence of P.W. 3 Monimala Goldar. However, her evidence as to the presence of this P.W. 1 Sumitra Mondal at the scene of occurrence was never challenged by the defence during the cross-examination.

18. The other witness, who claimed to have identified the witnesses as the assailants of victim Khagen Mondal is his daughter P.W. 12 Suchitra Mondal. The witness was cross-examined by the defence at length. She was suggested that she never disclosed to the police the name of the Appellants as the assailants of her father, to which she merely expressed her inability to recollect whether such fact was stated to the police or not. However, the Investigating Officer of the case was not cross-examined by the defence on that point to prove that such fact was not stated to him. It may be noted that witness categorically denied that he falsely implicated the Appellants as the assailants of her father.

19. Much have been argued by the defence about the involvement of Appellant No. 1 Akbar Ali Mondal, who according to the P.W. 1 Sumitra Mondal was also present at the spot and the said Akbar Ali Mondal and one Asgar at the point of a pistol threatened her with dire consequences if she raised alarm. The defence vehemently challenged the acceptability of such evidence on the ground neither such fact nor the name of the Akbar Ali was mentioned in the First Information Report. However, we find according to the P.W. 1 she was also interrogated by the Investigating Officer of the case and she narrated the entire incident to him. The defence neither suggested such claim of the P.W. 1 was false, nor that such fact was not narrated to the police while she was interrogated. The Investigating Officer of the case was also not cross-examined on that score. Be that as it may,

even if we keep it out of our consideration the evidence of P.W. 1 Sumitra Mondal that at the time of the incident she was threatened at the point of pistol by Akbar Ali Mondal and Anr. not to raise alarm, still his involvement in the commission of the offence cannot be excluded. Apart from the evidence of P.W. 1 Sumitra Mondal according to her daughter P.W. 12 Suchitra Mondal she was also threatened by the Appellant Akbar Ali Mondal and Anr. on a point of pistol not to raise any alarm. During the cross-examination of P.W. 12 Suchitra Mondal it was only suggested to her that she made such statement falsely but she categorically denied such suggestion. It may be noted that beside giving such suggestion it was never the case of the prosecution that such fact was not stated by her to the Investigating Officer of the case while she narrated the incident to him immediately after the occurrence when the police came to the spot. Therefore, on the evidence of P.W. 12 alone, it can very well be concluded without any hesitation that the Appellant Akbar Ali Mondal was one of the miscreants, who involved in the commission of the murder of Khagen Mondal.

20. The prosecution also examined P.W. 4 Pabitra Mondal, P.W. 6 Juthika Mondal, P.W. 10 Srabani Mondal, who are the residents of the adjacent houses. All the said witnesses are post occurrence witnesses and according to them being attracted by the sound of explosions of bombs from the house of Khagen Mondal they rushed towards the spot. According to the P.W. 4 Pabitra Mondal, while he was proceeding towards the house of the Khagen he found all these Appellants coming out from the house of Khagen and in the light of a torch he recognized them. Similarly, both the P.W. 6 Juthika Mondal and P.W. 10 Srabani Mondal claimed in their evidence, being attracted by the sounds of explosion of bombs they together rushed to the house of the victim Khagen Mondal and as they were proceeding they were obstructed by Ali Akbar and Asgar on the point of pistol and were asked to go back. It is also their evidence at that time they found the remaining Appellants were also there behind the said two miscreants. Although the P.W. 4 Pabitra Mondal did not state to the Investigating Officer about the fact that he recognized the Appellants by the light of the torch but so far as the P.W. 6 Juthika and P.W. 10 Srabani are concerned their evidence that they were prevented by the Appellants Akbar and Anr. on the point of pistol from going to the spot and they found other Appellants behind them remain unchallenged by the defence, except that they were suggested that such statement was false, which of course was categorically denied by them. We are thus not inclined to doubt participation of the Appellant Akbar Ali Mondal in the crime.

21. Finally, it has been vehemently contended by the defence that the conviction of the Appellants with the aid of Section 34 of the Indian Penal Code cannot be sustained due to the lack of the basic elements of the said provisions. It is contended even accepting the case of the prosecution that at the time of the occurrence the Appellants were physically present at the spot still they could not be held guilty for the substantive offence of murder with the aid of Section 34 of the Indian Penal Code without attributing any criminal overt act to them. In support of the above contention the defence relied on the following decisions of

the Apex Court, viz., (i) Suresh and Anr. v. State of U.P., reported in 2001 C LR (SC) 270, (ii) AIR 1945 118 (Privy Council) .

22. Now, having regards to the evidence of eyewitnesses establishing the facts that the Appellants before us being armed with bombs came together and trespassed into the house of Khagen Mondal and standing on his courtyard started hurling bombs one after Anr. at him until he was killed and thereafter they in a body left the spot and on their way to flee away also prevented the villagers, who rushed to the spot being attracted by the sound of explosion of bombs, it cannot be said that they did not share the common intention of murdering Khagen Mondal. This evidence, in our opinion is quite sufficient to prove the complicity of all the Appellants with the aid of Section 34 IPC for the substantive offence of committing murder of Khagen Mondal.

24. In the result, we do not find any merit in this appeal and accordingly same stands dismissed. Let the Lower Court Records be sent down to the Court below forthwith.

25. Criminal Section is directed to deliver urgent Photostat certified copy of this judgment to the parties, if applied for, as early as possible.