
(2015) 07 CAL CK 0038
In the Calcutta High Court
Case No : C.R.A. 396 of 2012

Alo Dafadar and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 324, 326, 34

Citation : (2015) 07 CAL CK 0038

Hon'ble Judges : Tapash Mookherjee, J

Bench : Single Bench

Advocate : Angshuman Chakraborty, Aminul Islam and Sasanka Sekhar Saha, for the Appellant; Faria Hossain, Advocates for the Respondent

Judgement

Tapash Mookherjee, J—The present appeal is directed against the judgement and order of conviction dated 27th April, 2012 and 30th April, 2012 passed by the learned Additional Sessions Judge, Fast Track Court- III, Krishnagar, Nadia in Sessions Trial No. XIII (Jan.) 2011 (Sessions Case No. 73(6) 2009). By the said judgement and order, learned trial Judge convicted all the appellants of the offences under Sections 307/324/34 I.P.C. and sentenced the appellants to suffer R.I. for 4 years each with fine of Rs. 1000/- each for the offence under Sections 307/34 I.P.C. and to suffer R.I. for 2 years each with fine of Rs. 1000/- each for the offences under Sections 324/34 I.P.C.

2. The facts leading to the appeal as disclosed in the F.I.R. of the case, in short, are as follows:-

In the afternoon of 06-06-2008, the appellant, Sejo Dafadar, went to the house of his neighbour, Uttam Sk. and searched for Bhaja Sk, son of the said Uttam Sk. and when Bhaja was not found there, an altercation developed between the appellant, Sejo Dafadar and Uttam Sk. during which Sejo Dafadar hurled abuses towards Uttam Sk. and during such quarrel, the appellant Bappa Dafadar suddenly appeared on the spot with a sharp knife and struck in the left leg of Uttam Sk. with that knife. Hearing the alarm raised by Uttam Sk. during such

assault, Bulbuli Bibi and Jamal Sk. rushed to the spot and when they tried to save Uttam Sk., then the appellant Sejo Dafadar and Alo Dafadar caught hold of Bulbuli Bibi and on their instigation, the appellant Bappa Dafadar assaulted both Bulbuli Bibi and Jamal Sk. with the knife in his hand. Due to such assault, Bulbuli Bibi, Jamal Sk. and Uttam Sk. sustained serious injuries and Bulbuli Bibi and Jamal Sk. were shifted at Nadia District Hospital immediately after the incidents. Subsequently, Gabu Sk. husband of Bulbuli Bibi who were one of the victims submitted a written complaint in the local Police Station narrating all the aforesaid incidents, on the basis of which Kotwali P.S. Case No. 272/2008 dated 06-06-2008 under Sections 326/307/34 I.P.C. was started against all the three appellants and after completion of investigation, charge sheet under Sections 326/307/34 I.P.C. was submitted against all the three appellants.

3. After submission of the charge sheet, the case was committed to the court of learned Sessions Judge, Nadia from where the case was transferred to the court of learned Additional Sessions Judge, Fast Track Court -III, Krishnagar, Nadia for trial, in usual course.

4. Considering the materials collected during investigation, charges under Sections 307/324/34 I.P.C. were framed against all the three appellants by the aforesaid trial court. The appellants denied the charges and pleaded their innocence all along.

5. Prosecution examined ten witnesses in total and proved some documents as well, to prove the charges against the appellants. Defence did not tender any evidence whatsoever. Considering the evidence, thus, produced on record, trial court found all the appellants guilty of the charges under Sections 307/324/34 I.P.C., convicted the appellants to the aforesaid charges and passed sentences against the appellants as mentioned earlier and hence, the appeal.

6. Mr. Chakraborty, learned Advocate appearing for the appellants, submits that delay in the F.I.R. has not been satisfactorily explained and there is no consistency in the oral testimonies of the witnesses examined in the case and that the trial court has wrongly convicted the appellants without there being any compact evidence against any of the appellants.

7. On the contrary, Ms. Hossain, learned Advocate appearing for the State, has submitted that the evidence on record for the prosecution is sufficient to prove the guilt of all the appellants and as such, the trial court has rightly found all the appellants guilty of the charges framed.

8. The incidents in question took place at about 2-00 p.m. on 06-06-2008 and the F.I.R. was submitted in the Police Station on that day at about 11-20 p.m. as found from the F.I.R. (Ext. 3 and 3/1) and according to Mr. Chakraborty, this unexplained delay bears a serious consequence for the prosecution. In reply, Ms. Hossain submits that three persons who were closely related to each other were seriously injured in the incidents and hence, their family members were engaged to arrange for their medical treatment and that was the reason for delay.

9. On perusal of the medical papers, i.e., Exts. 1 and 2 series, it is found that immediately after the incidents two victims were taken to Nadia District Hospital where they were admitted and the F.I.R. was submitted sometimes after such arrangement of medical treatment for the injured persons. So, the delay of a few hours was very natural.

10. One Gabu Sk. (P.W.1) happens to be the husband of one of the alleged victims. He submitted the F.I.R. in the case and he tried to describe the alleged incident in the F.I.R. However, he himself had not witnessed any of the incidents in question and he described the incident from his knowledge derived from such other persons as admitted by him.

11. The wife of P.W.1, i.e. Bulbuli Bibi (P.W.2) in her evidence stated that in the afternoon of the incident having heard a noise she went to the house of Uttam Sk from where the noise was coming out and after going there, she found the appellants, Alo, Sejo and Bappa assaulting her brother-in-law and she saw a long and very sharp knife in the hand of the appellant, Bappa. She stated further that when she requested the appellant to stop such assaults, the appellant, Bappa, struck on her chest with the knife at the provocation of the other appellants. She stated further that hearing her cries, her nephew, Jamal Sk, came to the spot and Jamal Sk. was also assaulted by the appellant, Bappa, with the same weapon. She added further that some local people came to the spot and shifted them at Saktinagar Hospital.

12. Jamal Sk. (P.W.3) stated that the son of Uttam Sk borrowed money from the appellant, Sejo Dafadar and in the afternoon of the incident, Sejo Dafadar went to the house of Uttam Sk and demanded the re-payment of the loan amount and when the son of Uttam Sk. asked for some time for such re-payment, the son of Uttam Sk. was threatened of assault. P.W.3 stated further that after the aforesaid incident, he found the appellant, Bappa, assaulting his aunt (Bulbuli) and due to such assault, his aunt sustained a long cut injury in her chest. P.W.3 further added that when he himself tried to save his aunt (Bulbuli), then he was also assaulted by the appellant, Bappa with a long "Heasua", due to which he lost his senses and taken to hospital for treatment.

13. Uttam Sk. (P.W.4) is the other alleged victim of the incident. He stated that on the day of the incident, the appellants, Bappa and Sejo, came to his house and called for his son Bhaja and demanded money from Bhaja which resulted in an altercation and during such altercation, both the appellants, Bappa and Sejo, assaulted Bhaja by fist and blows. P.W.4 stated further that when he raised protest against such acts of the appellants, the appellant, Bappa, assaulted on his leg with a long "Heasua" type sharp cutting instrument. He added further that when his sister-in-law, Bulbuli, came for his help, she was caught hold of from behind after which the appellant, Alo, handed over a "Heasua" to the appellant, Bappa and at the instigation of Alo, Bappa assaulted his sister-in-law, Bulbuli, in her chest with that "Heasua". P.W.4 also stated that when Jamal came to the spot and tried to save them, Jamal was also assaulted by the appellants.

P.W.4 also added that the injured Jamal and Bulbuli were admitted in hospital while he was treated by local a doctor named Monoranjan.

14. Rana Pramanick (P.W.5) was examined in part as the scribe of the F.I.R. but he denied to have scribed the F.I.R. and at that stage, his examination was deferred on the prayer of the prosecution and subsequently, he was not called again for examination and as such, his examination-in-chief stood incomplete.

15. Bapi Debnath (P.W.6) a rickshaw van puller stated only as to how the injured Bulbuli was shifted at hospital.

16. Mansura Bibi (P.W.7) did not claim to have any knowledge about any fact in issue.

17. Dr. Anirban Jana (P.W.8) treated the injured persons at Nadia District Hospital as claimed by him.

18. A.S.I Abhijit Banerjee (P.W.9) prepared the formal F.I.R and registered the case at Kotwali P.S. He proved the F.I.R. also which was scribed and executed in his presence as claimed by him. S.I. Sanjib Ghosh (P.W.10) investigated and submitted charge sheet in this case.

19. So, P.W.2, P.W.3 and P.W.4 are the only important and direct witnesses in the case for the prosecution. All of them were assaulted in the incident as claimed by them.

20. P.W.2 at first stated that her brother-in-law, Uttam Sk., was assaulted by all the appellants but subsequently, she corrected herself and stated that it was only the appellant, Bappa, who struck in the leg of Uttam SK. P.W.2 stated further that as she protested and tried to stop the assault on Uttam Sk., the appellant, Bappa, in particular, struck on her chest with a knife. After saying so, she had shown the mark of such injury on her chest in the court. She added further that the appellant, Bappa, assaulted her at the instigation of other two appellants. P.W.2 stated further that when her nephew, Jamal Sk, came to the spot he was also assaulted with the same knife by the appellant, Bappa. P.W.2 added further that after the incident, they were shifted at Saktinagar Hospital by the local people.

21. P.W.3 stated that he found his aunt, Bulbuli i.e. P.W.2, being assaulted by the appellant, Bappa and when he tried to save his aunt, Bulbuli, he was also struck by the appellant, Bappa, with a "Heasua" over the back of his neck.

22. P.W.4 stated that all the incidents took place in the courtyard of his house and according to him, his son, Bhaja, was at first assaulted with fist and blows by the appellants and when he raised protest against such assaults, the appellant, Bappa, struck on his leg with a long "Heasua" type sharp cutting instrument. He added further that when his sister-in-law, Bulbuli, tried to save him, she was also assaulted by the appellant, Bappa. P.W.4 added further that when Jamal came to the P.O. from the field to save them, Jamal was also assaulted by the appellants.

23. So, from the foregoing discussion of the evidence of the important witnesses, it is found that all the P.W.2, P.W.3 and P.W.4 were assaulted by the appellant, Bappa, with sharp weapon and all those witnesses corroborated each other on the point of the appellant, Bappa, assaulting them with a sharp weapon. According to them, the appellant, Bappa, struck on the chest of P.W.2 which caused a long sharp cutting injury in the chest of P.W.2. Dr. Anirban Jana (P.W.8), who treated P.W.2 within a very short period after the assault, found a deep cut injury on left forearm measuring 4 c.m. in length and involving underline muscles and another deep cut injury on upper part of the chest of P.W.2 which was 15 c.m. in length. P.W.8 further explained that such injuries may be caused by assault with knife. So, the medical evidence lends support to the fact of injury on the body of P.W.2. Similarly, P.W.3 stated that the appellant, Bappa, struck over the back of his neck by a long "Heasua" which is also a sharp instrument and P.W.8 stated that he found a cut injury on back of the neck and left ear of P.W.3. P.W.4 was treated by a local doctor and no record of his treatment has been produced. Be that as it may, as discussed above, the claim of P.W.2 and P.W.3 having sustained injuries on their persons due to assault by the appellant, Bappa, finds full support from the medical evidence.

24. Mr. Chakraborty argued that P.W.2, P.W.3 and P.W.4 are related to each other and since no independent witness has come forward to support their evidence, they should not be trusted totally. There is no such hard and first rule that the evidence of an alleged victim has to be always corroborated by independent witnesses. On the contrary, the injured witnesses are always considered as trustworthy witnesses because of the fact that a man having been assaulted seriously will never try to save his assailant implicating falsely any other person. In the present case, P.W.2, P.W.3 and P.W.4 supported each other on the point of assaults on them and the evidence of P.W.2 and P.W.3 find all supports from the medical evidence. So, all those witnesses are trustworthy and dependable witnesses, in my considered opinion and on the basis of such evidence it can be safely said that they were assaulted by the appellant, Bappa, by sharp weapon on the day of the incident.

25. However, the evidence on record to show the involvements of the appellants, Sejo and Alo in the incident of assaults in question are very weak and confusing.

26. P.W.2 at first stated that Uttak Sk. was assaulted by all the three appellants but immediately after such statement, she corrected herself and stated that Uttam Sk. was assaulted by the appellant, Bappa, only and she clearly stated that she was assaulted by the appellant, Bappa, only. However, she added that the appellants, Sejo and Alo's provocation was the cause of assault on them by the appellant, Bappa. But the fact of such alleged provocation is not corroborated clearly by any other witnesses. According to P.W.2, Jamal Sk was also assaulted by the appellant, Bappa, only.

27. According to P.W.3, the appellant, Sejo, threatened Uttam's son Bhaja of assault to realise the money lent to Bhaja by him. But Bhaja the most important

witness of the fact thus alleged has not been examined in the case. P.W.3 had not stated about any role of the appellant, Alo, in the incident. Similarly, according to P.W.4, the appellants, Sejo and Bappa, came to his house on the day of the incident and at first assaulted his son Bhaja with fist and blows but because of the absence of Bhaja as a witness such a claim cannot be accepted as true.

28. P.W.4 in one place of his evidence stated that the appellant, Alo, caught hold of the waist of Bulbuli from behind, handed over a "Heasua" to his son Bappa with which Bappa assaulted Bulbuli. Such a fact is not also corroborated by any other witness in the case. P.W.4 has not attributed any other role to the appellant, Alo.

29. Ms. Hossain argued that the appellants, Sejo and Alo, provoked the appellant, Bappa, to assault the victims but no such charge of abatement has been framed against the appellants, Sejo or Alo. Nor any such provocation has been proved by any cogent evidence. Ms. Hossain failed to explain with sufficient reasons as to what could have been the probable common intention of the appellants. So, the element of common intention does also fail in the case.

30. So, from what has been discussed above, it is clear that the prosecution has failed to prove by sufficient evidence and beyond all reasonable doubts, any direct or indirect role of the appellants, Sejo Dafadar or Alo Dafadar, in the incidents of assault.

31. The trial court, therefore, committed error in law by finding the appellants, Sejo Dafadar or Alo Dafadar guilty of the charges framed against them. They cannot be tied up with the aid of Section 34 I.P.C. also due to the reasons discussed above.

32. As mentioned earlier, it has been firmly proved in the case that on the day of the incident, the appellant, Bappa, assaulted P.W.2, P.W.3 and P.W.4 with sharp weapons. It is true that there is a slight difference regarding the description of the weapons used as pointed out by Mr. Chakraborty. But the weapons of assaults described by the witnesses are all sharp weapons and according to the doctor, the injuries found on P.W.2 and P.W.3 may be caused by sharp weapon. So, the exact description or name of the weapons used is not important in the present case. Mr. Chakraborty also tried to say that the place of occurrence had not been proved in the case. But his argument on the point is not correct because from the evidence on record considered together, it is clear that the entire incidents took place in the courtyard of P.W.4.

33. The weapon used by the appellant, Bappa, to assault was a dangerous weapon and the places of injury on the body of P.W.2 and P.W.3 were the vital parts of the body. The aforesaid facts definitely suggest that the appellant, Bappa, had an intention to kill P.W.2 or P.W.3 or to cause such a serious injury which could have been fatal. So, the offences under Sections 324/307 I.P.C. have been well proved beyond all doubts against the appellant, Bappa. It should be

noted here that the Trial Court has found the appellant, Bappa and other two appellants guilty with the aid of Section 34 I.P.C. But as discussed earlier, it was only the appellant, Bappa, who assaulted the victims. So, the appellant, Bappa, is alone responsible for the assaults. He is, therefore, guilty of the offences under Sections 324/307 I.P.C. The punishment inflicted against the appellant, Bappa, is not unreasonable or disproportionate. So, there is no reason to interfere with the decision of the Trial Court so far as the appellant, Bappa, is concerned.

34. The appeal of the appellant, Bappa, is therefore dismissed and the appeal by the appellants, Alo and Sejo Dafadar is allowed. The judgement of conviction and order of sentences passed against the appellants, Sejo Dafadar and Alo Dafadar are hereby set aside. They are found not guilty of the charges under Sections 307/324/34 I.P.C. and accordingly, acquitted of the said charges. The bail bonds furnished by them stand discharged.

35. The L.C.R be sent back to the trial court along with a copy of this judgement at once.

36. Photostat certified copy of this order, if applied for, be given to the parties on priority basis.