

(2016) 06 CAL CK 0069
In the Calcutta High Court
Case No : C.R.A. No. 806 of 2009.

Bhagirath Das and Others - Appellants @HASH The State of West Bengal

Date of Decision : 21-06-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, Section 325, Section 34

Citation : (2016) 4 CalCriLR 131

Hon'ble Judges : Siddhartha Chattopadhyay, J.

Bench : Single Bench

Advocate : Mr. Prabir Mitra, Mr. Prabir Majumder and Mr. Pinak Mitra, Advocates, for the Appellants; Mr. Manjit Singh, Ld. P.P., Mr. Anad Keshri, Mr. Anjan Dutta and Mr. Saryati Dutta, Advocates, for the State

Final Decision : Allowed

Judgement

Mr. Siddhartha Chattopadhyay, J. - This instant criminal appeal emanates from the Judgment and Order of conviction dated 26.11.2009 and 27.11.2009 passed by the learned Additional Sessions Judge, Fast Track Court, Tehatta, Nadia in connection with S.T. No. 2 (8) of 2008 arising out of Sessions Case No. 65 (7) of 2008. By filing this appeal, the convicts/appellants prayed for setting aside the said judgment and order of conviction on the ground that the learned Trial Court failed to appreciate the evidence of prosecution witnesses in its proper perspectives and the learned Trial Court did not consider the serious faulty investigation of the prosecution case.

2. At the time of argument, learned Counsel appearing on behalf of the convict/appellant wanted to assail the said judgment on multi-spoked grounds viz., delayed F.I.R., inconsistency in evidence, not mentioning the names of the assailants, before whom the victim was medically treated, non-production of material witnesses, non-sending the formal F.I.R. and written complaint to the Magistrate within the stipulated time, delay in recording the statement of the victim etc. As against this, learned Counsel appearing on behalf of the state vehemently argued delayed F.I.R. is not fatal, (if explanation is given) and minor discrepancies should not be looked through a magnifying glass. He also

contended that in terms of Section 231 Code of Criminal Procedure, it is the choice of the prosecution as to whom that would produce as witness in support of their case. Lastly, he contended that mere technicality should not stand in the way of conviction.

3. This Court has the opportunity to hear the erudite submission of both parties and in the interest of effective adjudication, facts and circumstances of the case along with the evidence led by the prosecution has to be scrutinised minutely.

4. P.W. 1 is the wife of the victim. In her evidence in chief she had categorically stated how her husband was assaulted and bled. Hearing the hue and cry she rushed to this spot along with her son Sanjay Das and local people namely Madan, Mahadeb, Dhiren Das and others. She categorically stated that local people took her husband to Tehatta Hospital by a trolley and her husband was admitted at Tehatta Hospital. But on the next day, he was forwarded to Saktinagar Hospital. When his condition was being deteriorated, he was again referred to N.R.S Hospital at Calcutta. Thereafter she has lodged the F.I.R., in which she has tried to explain the cause of delay in lodging the F.I.R. that the physical condition of her husband was alarming and she was busy in regard to the treatment to her husband. She was the only member to look after her husband. But her such evidence does not inspire confidence on the ground that in her cross-examination she admitted that she has one son and one daughter and she lives with her son and daughter. He also categorically stated that she herself, her nephews and trolley bearer went to the hospital along with the injured. Her son and daughter also accompanied her to the hospital. Therefore, if I consider her evidence in its entirety, I would find that there are other persons in her house who could have lodged the F.I.R. at the earliest opportunity. Therefore, explanation given by the defacto complainant in her evidence does not stand on the aforesaid grounds. It is true that delayed F.I.R. ipso facto does not make the prosecution case doubtful, if proper explanation is given. In this instant case, I find that there is no plausible and acceptable explanation from the prosecution side.

5. Now this Court is to assess the evidence with a golden scale. P.W. 2 is one Madan Das. According to the defacto complainant, he went to the spot after hearing the hue and cry. But in his examination in chief this Madan Das expressed that he does not know any incident held in between the accused persons in one hand and Sanatan Das on the other hand. Curiously enough, this witness did not support the prosecution yet he was not declared hostile by the prosecution and the reason is best known to the learned Public Prosecutor-in-charge, who appeared on behalf of the state before the learned Trial Court.

6. P.W. 3 is the victim himself. In his evidence he has narrated how he sustained injury on his head. He admitted that he regained his sense at Tehatta Hospital. In cross-examination he has stated that occasionally he used to take liquor and he had taken it at the time when the alleged occurrence took place. But P.W. 1 (his wife) in her evidence had denied that her husband is addicted to liquor. In

his cross-examination he has further admitted that when he was returned from N.R.S. Hospital, he was interrogated by the police. In his evidence in chief, I find that he was taken to Tehatta Hospital and he regained his sense and even after being admitted at N.R.S. Hospital (when F.I.R. was lodged) the Investigating Officer could have examined him instantly. This is perhaps needless to say that delay in recording the statement of the vital witnesses has to be considered with a pinch of salt. The P.W. 4 claimed to have seen the accused persons holding Sanatan. But in cross-examination, he has given a somersault and contended that he did not find anybody other than Sanatan at the place of occurrence when he reached at the spot. P.W. 1, the wife of the victim, in her cross-examination also admitted that this P.W. 4 went to the spot after hearing the hue and cry. Therefore, P.W. 4's evidence is not creditworthy. Evidence of P.W. 5 is insignificant because he was tendered for cross-examination. P.W. 6 Mahadeb was also tendered for cross-examination. P.W. 7 is the doctor. According to him, at the relevant point of time, he was posted at Tehatta Sub-Divisional Hospital and he found injuries such as scalp injury on the right side, sharp cut injury at the frontal portion and another sharp cut injury in the temporal areas. This apart, there were multiple sub-cutaneous injuries. He has prepared injury report, which was marked exhibit 2. In the injury report he has mentioned that the victim was attacked by a group of people. The P.W. 7, has received the F.I.R. and has prepared the formal F.I.R. He has proved the endorsement in the written complaint and proved the formal F.I.R. and his endorsement in the written complaint. The P.W. 9 is the brother-in-law of the victim. In his evidence he has categorically stated how the victim sustained injury. But his evidence is not trustworthy on the ground that in cross-examination he has stated that he named the accused persons before the doctor as assailants. But the doctor of Tehatta Sub-Divisional Hospital did not say so. In cross-examination he also stated that the victim did not regain his sense at Tehatta Hospital whereas the victim himself as well as the doctor had stated that the victim regained his sense and he was co-operative. His evidence cannot be accepted because there are serious discrepancies and embellishments. The P.W. 10 is the Investigating Officer of this case. In course of investigation he has prepared the rough sketch map with index, recorded the statement of the accused under Section 161 of the Criminal Procedure Code, collected injury report and thereafter he had submitted charge-sheet under Section 307/325/34 of the Indian Penal Code. In course of cross-examination he has categorically stated that no witness has ever stated to him that the victim was assaulted by the handle of a tube well. He also admitted that in the rough sketch map, he has not mentioned where the tube well was. He also admitted that he did not examine the son and daughter of the victim.

7. P.W. 11 and P.W. 12 are the doctors of Saktinagar Hospital and N.R.S. Medical College and Hospital respectively. They have proved the injury report, city scan report etc. The P.W. 13 is the doctor attached to N.R.S. Medical College and Hospital. He has produced the discharge certificate and the O.P.D tickets. He admitted that he does not have any knowledge about the injury.

8. None can deny that truth is bound to suffer from certain infirmities, when projected through human agencies. But if there are serious discrepancies in evidence, in that case Court should not hesitate to render benefit of doubt to the accused persons. Son and daughter of the victim were not examined by the Investigating Officer of this case. According to the defacto complainant they went to this spot after the alleged incident and they also went to hospital. Naturally, they were vital witnesses and at least it can be presumed that they were not hostile to their parents. In such circumstances, why the prosecution withheld them is a matter of concern.

9. It also appears from the written complaint, that the F.I.R. was sent to Court nearly after three days. The Investigating Officer did not give any reason as to why the F.I.R. was sent to the Court at a very belated stage. The Investigating Officer did not give any explanation as to why he did not record the statement of the victim as well as other witnesses promptly.

10. In the midst of such discrepancies and contradictions, I am of the view that the learned Trial Court could not visualise the incident in its broad spectrum.

11. In the result, the judgment and order of conviction passed by the learned Additional Sessions Judge, Fast Track Court, Tehatta in connection with S.T. No. 2 (8) of 2008 is hereby set aside. Appellants are set at liberty at once. They are hereby discharged from their respective bail bonds.

12. Let a copy of this Order and L.C.R. be sent to the learned Court below for information and taking necessary action in accordance with law.

13. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.