
(2015) 10 CAL CK 0061
In the Calcutta High Court
Case No : CRA No. 583 of 2009

Bulu Myea and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 174, 313
Penal Code, 1860 (IPC) — Section 148, 149, 302, 34

Citation : (2015) 10 CAL CK 0061

Hon'ble Judges : Debasish Kar Gupta and Md. Mumtaz Khan, JJ.

Bench : Division Bench

Advocate : Sanjay Banerjee, Sajal Kumar Chakraborty and Syed Nazmul Hossain, for the Appellant; Manjit Singh and Ranabir Roychowdhury, for the Respondent

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J.—This appeal is directed against a judgment and order of conviction dated July 13, 2009 and sentence dated July 14, 2009 passed by the learned Additional Sessions Judge, Birbhum at Rampurhat in Sessions Trial No. 4/2001 arising out of Sessions Case No. 35/1997 (G.R. Case No. 58/1995).

2. By virtue of the impugned judgment the appellants were convicted for commission of offence punishable under Sections 148 /149 /302 of Indian Penal Code (hereinafter referred to as the I.P.C.) and 9(b)(ii) of Indian Explosive Act and sentence for life imprisonment with fine of Rs. 5,000/- each, in default, to suffer rigorous imprisonment for a further period of one month each. Other accused persons, i.e. Rahel Sk., Altab Momin, Sujana Momin, Saheb Sk., Ashis Das, Kalu @ Abdul Rouf, Mannan Hossain @ Ali, the accused Nos. 1, 2, 3, 4, 5, 6 and 7 were found not guilty for commission of offence under Sections 148 /149 /302 of I.P.C. and 9(b)(ii) of Indian Explosive Act and they were acquitted from charge levelled against them. According to the finding of the learned Court below, Sajjad Sk (accused No. 7) had been chased by the local

people after commission of offence under reference and they killed him.

3. One Shibnandan Dutta (PW 7) went with his brother-in-law Nihar Kanti Pal @ Swapan to see whether any water of river was uplifted on the Sand ghat in the southern side of Kaitha village, District-Birbhum, when they were returning back at about 07.00 hours. Jakir Momin (PW 6), Sentu Sk and Lal Sk, the labourers were following them. When they had arrived in front of the house of one Khaleque Momin, Bulu Myea (appellant No. 1), Sadekul Sk (appellant No. 2), Rahel Sk, Altab Momin, Sujan Momin, Saheb Sk, Ashis Das, Kalu @ Abdul Rouf, Mannan Hossain @ Ali (accused Nos. 2, 3, 5, 6, 8, 9 and 10) and Sajjad Sk (since deceased) armed with chaku, knife, vojali, tarowal and other weapon surrounded the de facto complainant and his brother-in-law Nihar Kanti Pal @ Swapan (the victim). The appellant No. 1 assaulted the victim on his head with the help of a sword. The other accused persons caught hold of the victim and assaulted him with chaku, knife and vojali indiscriminately. Sadekul Sk (appellant No. 2) assaulted the victim on his belly with a chaku. The victim fell down on the ground and the appellant No. 1 assaulted him on the left chest with a sword. The appellant No. 1 threatened the de facto complainant and the aforesaid labourers with dire consequences for their attempt to resist the appellant No. 1. Bulu Myea (appellant No. 1), Kalu @ Abdul Rouf (accused No. 9) and Ashis Das (accused No. 8) fled away through the village. The rest of the accused persons were running towards the river. In the meantime, 300/400 local persons arrived at the place of occurrence upon the hearing the hue and cry. They chased the accused persons who were running towards the river. They caught hold of Sajjad Sk (accused No. 7) who expired consequent upon mass assault. The other local persons were chasing Bulu Myea (appellant No. 1), Ashis (accused No. 8) and Kalu @ Abdul Rouf (accused No. 9). After reaching the Metal Road of Fatepur More they fled away riding on three cycles. Mannan Hossain @ Ali (accused No. 10) fled away after exploding two bombs.

4. At the time of commissioning of offence Mannan Hossain @ Ali (accused No. 10) of Nalhati village and Ashis Das (accused No. 8) got temporary permission for lifting sand from the above Sand ghat. Since the victim had permanent permission for lifting sand from the above Sand ghat, the accused kill the victim.

5. At about 09.00 hours on that date Ashim Mondal (PW 14) started preparing inquest report (Exbt.-7) of the body of the victim in connection with Nalhati P.S. U/D Case No. 2/95 dated February 4, 1995 after reaching the place of occurrence. Following injuries were found by PW 14 on the dead body of the victim:-

1. Blood injuries caused by sharp weapon measuring about 3" length and 2" gap on the back side of the head towards right side of the deceased.

2. Wound caused by sharp weapon measuring about 2" & 1.5" length towards upper side in front of head towards right side of right eyebrow.

3. A wound mark stabbed with sharp weapon towards the below portion and

back side of right ear.

4. Blood injury caused by sharp weapon measuring about 3" gap towards right upper side of the belly.

5. Blood injuries caused by 3 (three) sharp weapon towards left side & right side of the back.

6. A cut wound mark caused by sharp weapon measuring about 2" length below the thumb fingure of left hand palm.

7. A lengthy wound caused by sharp weapon just below the left side lip and on left side chin.

8. A gap wound caused by sharp weapon measuring about 3" breadth in the middle portion of the chest wherefrom blood was oozing and the lungs has been seen.

6. On February 4, 1995 at 09.35 hours, one Shibnandan Dutta (PW 7), lodged a written complaint (Exbt.04) before the Officer-in-Charge Nalhati Police Station, District-Birbhum.

7. According to the above written complaint, there was a dispute in between the victim and the appellant No. 1 in respect of Sand ghat of Kaitha village, District-Birbhum. The appellant No. 1 and his associates made an attempt to kill the victim two years ago and looted the properties/articles from the house of the victim.

8. The above written complaint was registered as G.R. 58/1995. Formal FIR appearing Nalhati P.S. Case No. 9/95 dated February 4, 1995 was drawn at 10.35 hours (Exbt.-5).

9. The aforesaid PW 14 was appointed as Investigating Officer. The PW 14 prepared a rough sketch map with index (Exbt.8 and 8/1) of the place of occurrence with the help of one Sri Hari Prakash Keshri (PW 2), a photographer during his visit to the place of occurrence. The dead body of the victim was sent to the Sadar Hospital Rampurhat, District-Birbhum on February 4, 1995 at 16.30 hours. The dead body of the victim was received in the above hospital at 10.45 hours on February 5, 1995 and post mortem examination was conducted by Dr. J.N. Mahanta (PW 1) on the same date at 12.35 hours. The post mortem report No. 28 dated February 5, 1995 (Exbt.-1) was prepared by the PW 1. According to the above post mortem report, the victim sustained following injuries:-

One deep incised wound on the lower lip near the angle of the mouth left side about 1 1/2" x 1/2" x 1/2".

One incised wound over the left axilla about 3" x 1 1/2" x 1" with interrrthorsic involvement with fracture 5th and 6th ribs left side with laceration of the left lung occipital lobe.

One incised wound on the right lateral chest wall upper part about 2 1/2" x 1" x

1/2" with fracture 7th and 8th rib right side with laceration of middle and lower lobe.

One incised wound back of the chest right lower part about 1" x 1/2" x 1/2".

One incised wound on the back over the infra scapular region left side about 1" x 1/2" x 1/2".

One incised wound right parietal region anteriorly about 1 1/2" x 1/2" x 1/4".

One incised wound right parietal region posteriorly about 1 1/2" x 1/2" x 1/4" approximately.

10. According to the above post mortem report, the cause of death of the victim was due to haemorrhage and shock arising out of the above injuries which were ante mortem and homicidal in nature. It was also recorded in the above post mortem report that two inside wounds in the liver abdomen of the victim were found in the superior surface and no human could survive after those injuries.

11. After conclusion of the investigation, the PW 14 submitted a charge-sheet bearing C.S. No. 37/1997 dated June 14, 1997 against the appellants and the other accused persons mentioned hereinabove for commission of offence punishable under Sections 302 /34 of I.P.C. and 9(b)(ii) of Indian Explosive Act. The charge dated March 5, 2001 was framed against the appellants and accused Nos. 2, 3, 5, 6, 8, 9 and 10.

12. It is submitted by Mr. Sanjay Banerjee, learned amicus curiae that the impugned judgment, order of conviction and sentence cannot be sustained in law for the following reasons:-

According to him, the place of occurrence of death of the victim was not proved beyond reasonable doubt taking into consideration the contradiction of letter of complaint, the First Information Report (hereinafter referred to as the FIR), rough sketch map, evidence of eyewitnesses (PW 6, PW 7 and PW 9), with evidence of post occurrence witnesses (PW 12 and PW 13). According to the evidence of the eyewitnesses (PW 6, PW 7 and PW 9), the place of occurrence of death of the victim was the road in front of one Khalek Momin but he was not a prosecution witness.

13. It is further submitted by him that there was contradiction in between two documentary evidences. According to the inquest report, the victim sustained injuries only in front side of his body. But, according to post mortem report he sustained injury on the back side of his body also.

14. His third ground was that, there was no difference of the role played by the appellant No. 2 with that of accused Nos. 2, 3, 5, 6, 8, 9 and 10. But order of acquittal was not passed in favour of the appellant No. 2. His conviction for commissioning of offence under Section 9(b)(ii) of the Indian Explosive Act, cannot be sustained in law. According to one eyewitness (PW 9), Sajjad Sk (since deceased) hurled the bombs.

15. His next submission was that according to the evidence available on record, no one other than the victim sustained injury at the place of occurrence of death of the victim. It should have been considered by the learned Court below as a matter of doubt with regard to commission of offence by the appellants.

16. Mr. Banerjee relied upon the decisions of Biri Singh Vs. State of U.P. and Others, and Buta Singh Vs. The State of Punjab, in support of his above submissions.

17. Mr. Sajal Chakraborty, learned advocate appearing on behalf of the appellant No. 1, adopted the submissions of the learned Amicus Curiae. He further added that the delay in forwarding the case to the court was violative of the provisions of Section 157 of Cr.P.C. According to the FIR, the cause of death of the victim was sustaining injury from sword which was not corroborated with the post mortem report. According to the evidence of PW 6, two bombs were exploded by the accused No. 7 (since deceased) but according to PW 8, the bombs were thrown by Ashis Das (accused No. 8).

18. Mr. Chakraborty relied upon the decision of Balaka Singh and Others Vs. The State of Punjab, .

19. Mr. Siladitya Sanyal, learned advocate appearing for the appellant No. 2, also adopted the submissions of the learned Amicus Curiae. He further added that the contradiction of the evidence adduced by the PW 13 with that of other witnesses in respect of the place of occurrence of death of the victim touches the root of the prosecution case. According to the PW 13, it was near river bed and the distance of that place was 150/200 meters from the house of Khalek Momin which was the place of occurrence of death of the victim. It is also submitted by him that the de facto complainant did not disclose the information regarding the death of the accused No. 7 in the FIR inspite of his knowledge of the above information at that time.

20. Mr. Sanyal relied upon the decision of Amar Singh and Others Vs. State of Punjab, in support of his above submissions.

21. It is submitted by Mr. Manjit Singh, learned public prosecutor, High Court, Calcutta, appearing with Ranabir Roychowdhury, learned State advocate, that the commission of offence by the appellants was proved beyond any doubt on the basis of the evidence of the eyewitnesses (PW 6, PW 7 and PW 9). According to him, the Investigating Officer thought it fit that adducing of evidence of Khalek Momin was not necessary for proving the guilt of the appellants beyond reasonable doubt.

22. According to him, the place of occurrence of death of the victim was proved by eyewitness. With regard to the evidence of PW 12, it is submitted by him that he was a post occurrence witness and he found the dead body of the victim in front of the house of one Furfura Bibi.

23. According to him, post mortem report was prepared by medical expert

detecting the injuries sustained by the victim some of which might not have been detected in inquest report.

24. According to him, the role played by the appellant No. 2 in commissioning the offence was not same in comparison to accused Nos. 2, 3, 5, 6, 8, 9 and 10. It is also submitted by the learned public prosecutor that in view of the facts and circumstance of the case, proof of motive of the appellants was not necessary for conviction of the appellants for commission of offence under Sections 148 /149 /302 of I.P.C. as also under Section 9(b)(ii) of the Indian Explosive Act.

25. Our attention was drawn toward the question Nos. 8 and 9 asked to the appellants in course of their examination under Section 313 of Cr.P.C. and their replies thereto for submitting that no prejudice was suffered by the appellants in this regard.

26. The learned public prosecutor relied upon the decisions of Leela Ram (Dead) through Leela Ram (Dead) Through Duli Chand Vs. State of Haryana and Another, , Ravi Kumar Vs. State of Punjab, , Nar Singh Vs. State of Haryana, and Bur Singh and Another Vs. State of Punjab, in support of his above submission.

27. We have heard the learned Counsel appearing on behalf of the respective parties as also the Amicus Curiae appointed by us and considered the impugned judgment on the basis of the evidence available on record.

28. Regarding the discrepancy of evidence, it has been observed by the Apex Court in State of Himachal Pradesh Vs. Lekh Raj and Another, that courts are required to adopt a rational approach to judge the evidence by its intrinsic worth and the animus of witnesses in arriving at a conclusion about the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe law in favour of the accused taking into consideration hypertechnicalities or figment of imagination. The relevant portion of the above decision is quoted below:-

"10.....The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hypertechnicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has

to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered as part and parcel of the human civilization and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind."

29. Taking into consideration the facts and circumstances of this case, we find that PW 6, PW 7, PW 8 and PW 9 were the eyewitnesses of commissioning of offence by the appellants. The learned Court below took into consideration the evidence of the brother-in-law of the victim who used to look after his business affairs and who had accompanied the victim at the time and place of occurrence of offence under reference. According to PW 7, the place of occurrence was the road nearby the house of one Khalek Momin. The appellants, amongst others, chased the victim and the PW 7 at the above place. The appellant No. 1 assaulted the victim with a sword on his scalp. The appellant No. 2 assaulted the victim with a vojali on right chest and just upper side of right abdomen of the victim. The above evidence was corroborated by the evidence of eyewitnesses, i.e. PW 6, PW 8 and PW 9. None of them was shakened in course of cross-examination. The injuries of the victim mentioned by the above prosecution witnesses were corroborated by the post mortem report dated February 5, 1995. But, according to the evidence of PW 12, he found the dead body of the victim on the road in front of the house of one Furfura Bibi. According to the PW 13, he found two dead bodies lying on the road. The learned Court below accepted the evidence of the above eyewitnesses to arrive at a conclusion with regard to the place of occurrence. The PW 12 and PW 13 were not eyewitnesses. PW 12 found the dead body at a place mentioned by him. He did not witnessed the commission of offence. So, the Court below took into consideration the eyewitnesses as also a few documentary evidence. PW 13 found two dead bodies. Further the evidence of eyewitnesses PW 6, PW 7 and PW 9 was corroborated with the medical evidence.

30. The decision of Biri Singh (supra) relating to shifting of dead body of the victim was decided by the Apex Court taking into consideration the facts and circumstances. But, in the case in hand the learned trial judge took into consideration the difference of evidence of eyewitnesses of the commissioning of offence with the evidence of post occurrence witnesses. So, the above decision is not applicable in the instant case. Similarly, the issue involved in the matter of Buta Singh (supra) was the extension of benefit of doubt in case of probability of two views. In the case in hand the above principle of law has no manner of application in view of the discussion made by us hereinabove.

31. In the decision of Amar Singh (supra) the benefit of doubt was extended in favour of the accused taking into consideration the contradiction of evidence of eyewitnesses and the medical evidence. It has already been discussed by us hereinabove the learned Court below did not find any contradiction in between

the evidence of the eyewitnesses and the medical evidence. Taking into consideration the decision making process followed by the learned Court below, we find no error in that process. Therefore, the above decision is not applicable in the instant case.

32. Regarding non-inclusion of Khalek Momin amongst the other prosecution witnesses, selection of prosecution witnesses depends upon the decision of the investigating agency for proving the commission of offence by accused. In the instant case, the commission of offence by the appellants at the place of occurrence of the offence was proved beyond reasonable doubt before the learned Court below on the basis of four eyewitnesses and without making the aforesaid Khalek Momin as witness for the prosecution.

33. With regard to the next point for consideration relating to discrepancy in between the inquest report and post mortem report regarding place of sustaining injury of the victim in his body. The provision for holding of an inquest and preparing an inquest report is contained in Section 174 of Cr.P.C. It has been held by the Hon"ble Supreme Court in the matter of Amar Singh Vs. Balwinder Singh and Others, , that the basic purpose of holding an inquest is to prepare a report regarding the cause of death, namely, whether it is suicidal, homicidal, accidental or by some machinery. The relevant portion of the above decision is quoted below:-

"12.....The provision for holding of an inquest and preparing an inquest report is contained in Section 174 CrPC. The heading of the section is "Police to enquire and report on suicide etc." Sub-section (1) of this section provides that when the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give information to the nearest Executive Magistrate and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death describing such wounds, fractures, bruises, and other marks of injury as may be found on the body and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted. The requirement of the section is that the police officer shall record the apparent cause of death describing the wounds as may be found on the body and also the weapon or instrument by which they appear to have been inflicted and this has to be done in the presence of two or more respectable inhabitants of the neighbourhood. The section does not contemplate that the manner in which the incident took place or the names of the accused should be mentioned in the inquest report. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely, whether it is suicidal, homicidal, accidental or by some machinery etc."

(Emphasis supplied)

34. It has further been held by the Hon^{ble} Supreme Court in the above decision that in a case where the prosecution case is fully established by the direct testimony of the eyewitness, which is corroborated by the medical evidence, any failure or omission of the investigating officer cannot render the prosecution case doubtful or unworthy of belief. The relevant portion of the above decision is quoted below:-

"15.....In our opinion the circumstances relied upon by the High Court in holding that the investigation was tainted are not of any substance on which such an inference could be drawn and in a case like the present one where the prosecution case is fully established by the direct testimony of the eyewitnesses, which is corroborated by the medical evidence, any failure or omission of the investigating officer cannot render the prosecution case doubtful or unworthy of belief."

35. The above settled proposition is applicable in the instant case so far as the point of law is concerned.

36. Ordinarily, the value of medical evidence is only corroborative. It proves that an injury could have been caused in the manner alleged. Reference may be made to the decision of Solanki Chimanbhai Ukabhai Vs. State of Gujarat, and the relevant portion of the above decision is quoted below:-

"13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence."

37. In the case in hand we find that sustaining of injury by the victim on back side of the dead body was not only evident from the post mortem report but also from the inquest report. Therefore, the impugned judgment cannot be interfered with on the ground that according to inquest report, the victim did not suffer any injury on the back side of his body.

38. Regarding the third ground for challenging the impugned judgment, we find from the evidence of PW 7 that both the accused persons assaulted the victim either with sword and/or with bhojali. Therefore, considering the evidence of eyewitnesses (PW 6 to PW 9), we are of the opinion that the role played by the appellants for committing offence under reference were not similar to that of other accused. So, the impugned judgment does not require our interference on the above ground.

39. The issue involved in the decision on Balaka Singh (supra) was differential treatment of four out of nine accused persons who were standing on the same footing. As discussed hereinabove, the appellants were not standing on the same footing with the other accused. So, the above decision has no manner of application in the instant case so far as either of the appellants concerned. Necessary to point out that though Mr. Chakraborty referred to more than one decision, he restricted his submissions to the decision of Balaka Singh (supra).

40. Considering the next ground for challenging the impugned judgment we find none of the associates of the victim sustained injury, we are of the opinion that it would not render the case of the prosecution doubtful.

41. Before parting with the file, we record our appreciation in connection with the assistance we have received from the learned Amicus Curiae.

42. In view of the observations and discussions made hereinabove, this appeal is dismissed.

43. Let this judgment together with the Lower Court's records be sent back to the learned Court below expeditiously.

44. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, on priority basis.

Md. Mumtaz Khan, J.

I agree.