

(2009) 09 CAL CK 0045
In the Calcutta High Court
Case No : CRA No. 126 of 2002

Fulun Sekh and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 15-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 174(1)
Explosives Act, 1884 — Section 9B(1)
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2009) 09 CAL CK 0045

Hon'ble Judges : Kalidas Mukherjee, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Partha Sarathi Bhattacharjee and Ranjit Kr. Sanyal, for the Appellant; Joy Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

Kalidas Mukherjee, J.—This appeal is directed against the judgment of conviction and sentence passed by learned Additional Sessions Judge, Kandi, Murshidabad in Sessions Serial No. 45 of 1998 corresponding to Sessions Trial No. 2 of June, 2000 sentencing thereby the appellants to suffer imprisonment for life and also to pay a fine of Rs. 1,000/- each in default to suffer rigorous imprisonment for six months each u/s 302/34 of the Indian Penal Code. The learned Judge also convicted and sentenced the appellant Fulan Seikh to suffer rigorous imprisonment for one year and to pay a further fine of Rs. 1,000/- in default to suffer rigorous imprisonment for six months for the offence punishable u/s 9B(1) (b) of the Explosive Act with the direction that the sentences shall run concurrently.

2. One Dibyendu Kumar Saha lodged complaint with the O.C. Kandi P.S. on 25.6.1993 alleging that at about 7.30 a.m. his elder brother Ardhendu Kumar Saha of Ganthla went to market near Ganthla Bus Stand for shopping. He was accompanied by his nephew Basudeb Saha of Ganthla. While they were buying

fish at the market, suddenly Md. Fulan Seikh threw a bomb on the back of Ardhendu from a distance of about 3-4 ft. from behind. Being injured, Ardhendu fell down on the ground and he was surrounded by Md. Kaimuddin Seikh, Kalam Seikh, Gora Seikh, Sher Ali Seikh, Kala Seikh and Md. Abu Sayeed Seikh. Accused Sher Ali Seikh and Kala Seikh held the injured forcibly on the ground and at that time Fulan Seikh and Kaimuddin Seikh guarded them holding "shotter" in their hands. After throwing the bomb, Fulan Seikh drew out the "shotter" from his waist. Accused Gora Seikh with a big dagger struck Ardhendu in the throat. The incident was seen by Basudeb Saha, Soumendu Saha and Nikhil Pal. Upon receipt of the complaint, the Kandi P.S. Case No. 76 of 1993 dated 25.6.1993 was started and after completion of investigation charge sheet was submitted.

3. The learned Judge passed the impugned judgment of conviction and sentence holding that the cross-examination of the defence practically strengthened the material version of P.W. 2 and that P.W. 2 has been proved to be an eyewitness. The learned Judge further observed that the evidence of P.W. 2 has been well corroborated by the medical evidence. The learned Judge observed that Section 174 of the Cr.P.C. relates to the holding of inquest to ascertain the cause of death and the inquest report was not an evidence, but, can be used to test the veracity of the witness if he makes contradictory statement in regard to the inquest at the Trial. The learned Judge finally observed that the prosecution succeeded in bringing home the charge against the accused persons by cogent, satisfactory and legal evidence beyond reasonable doubt.

4. Mr. Bhattacharjee, learned Counsel appearing for the appellants submits that according to P.W. 1, the complaint was lodged at Mahalandi Police Camp, but, the I.O. P.W. 9 has stated that he received the F.I.R. at the place of occurrence at 11.30 hours. Mr. Bhattacharjee submits that the earlier information in writing which was given to the Mahalandi Police Camp ought to have been treated as F.I.R. and the subsequent complaint lodged with the O.C. of Kandi Police Station cannot be treated to be the F.I.R., because the information in writing which was given to Mahalandi Police Camp was the information first in point of time regarding the commission of the alleged offence. Mr. Bhattacharjee contends that apart from P.W. 2 none can be said to be the eyewitness of the alleged occurrence. As regards the evidence of P.W. 2, Mr. Bhattacharjee contends that his testimony cannot be relied upon on the ground that there are inconsistencies and improbabilities.

5. Mr. Bhattacharjee submits that in the inquest report the names of the assailants were not disclosed, although, it was disclosed in the F.I.R. which was lodged with the Kandi Police Station. Mr. Bhattacharjee contends that the absence of the names of the assailants in the inquest report suggests that the names of the accused persons were inserted in the F.I.R. subsequently and it speaks of fabrication and embellishment. Mr. Bhattacharjee contends that P.W. 5 cannot be said to be the eyewitness. Mr. Bhattacharjee contends that the manner

of assault as stated in the F.I.R. does not fit in with the evidence of the P.Ws. It is contended that the role of Kalam as stated in the F.I.R. has not been stated in the evidence.

6. Mr. Sengupta appearing on behalf of the State contends that the evidence of P.W. 2 finds corroboration from the evidence of the doctor. It is contended that the testimony of the relation witness cannot be discarded and it is the settled principle of law that the relation witnesses will tell the truth. Mr. Sengupta contends that P.W. 2 is convincing and it is sufficient to warrant conviction. Mr. Sengupta contends that the inquest report is not supposed to contain the names of the assailants in view of the observation of the Hon''ble Apex Court in the case reported in 1997 SCC (Cri) 899 [Mahendra Rai v. Mithilesh Rai and Ors.] and 1975 SCC (Cri) 427 [Pedda Narayana and Ors. v. State of Andhra Pradesh]. Mr. Sengupta has further referred to and cited the decision reported in 2002 SCC (Cri) 1220 [Krishna Mochi and Ors. v. State of Bihar] and 1973 SCC (Cri) 886 [State of Punjab v. Jagir Singh Baljit Singh & Karam Singh].

7. Mr. Sengupta contends that the evidence of P.W. 2 if found convincing can form the basis of conviction.

8. Mr. Bhattacharjee argued on the point of discrepancies and contradictions between the evidence of P.W. 1, the author of the F.I.R. and the evidence of the I.O. P.W. 9. According to P.W. 1, Basudeb Saha (P.W. 2) was present with the victim Ardhendu Saha at the time and place of the occurrence. P.W. 1 came to learn about the incident from the P.W. 2 and thereafter lodged the complaint. P.W. 2 has stated in his cross-examination that he did not give any writing regarding the incident to the police and Dibyendu Saha reported it. It is in his evidence that Dibyendu Saha wrote the complaint in his presence and the said writing was prepared at the Ganthla Bus Stand. P.W. 9, the O.C. of Kandi P.S. has stated that on the date of incident in the morning at about 9.35 a.m. on getting an information he went to Ganthla Bazar where a bomb had already been exploded. He found the dead body of Ardhendu lying on the kancha portion of the road. It is in evidence of P.W. 3 that Ganthla Bus Stand and Ganthla Bazar are located in the same and identical place. P.W. 9 has stated that he made initial query and one Dibyendu Kumar Saha handed over a written complaint to him regarding the incident and after receiving such written complaint, he noted the gist of the complaint and sent the same to Kandi Police Station through Home Guard Ananta Lal Roychowdhury for starting a case. It is also in his evidence that he contacted the Police Station over R.T. and advised the concerned Police Officer to start a case.

9. P.W. 11 Ananta Lal Roychowdhury has stated that the O.C. gave an F.I.R. to him at Ganthla to take it to Kandi P.S. and accordingly he took the same to Kandi P.S. and handed it over to the Second Officer S.I. Shib Narayan Mondal of Kandi Police Station.

10. In view of such evidence of the P.Ws as discussed above, it is clear that the

complaint was lodged with the O.C. at the place of occurrence which was sent to the Police Station and the F.I.R. was drawn. In such view of the matter we are of the considered view that there is no suspicion or ambiguity regarding the lodging of the F.I.R. and the discrepancy as urged by Mr. Bhattacharjee does not cast any shadow of doubt on the veracity of the prosecution case.

11. Mr. Bhattacharjee contends that at the time of holding inquest there was no disclosure of the names of the assailants. In the case of Pedda Narayana and Ors. v. State of Andhra Pradesh (Supra) it has been held by the Hon''ble Apex Court as follows:

A perusal of this provision would clearly show that the object of the proceedings u/s 174 is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted appears to us to be foreign to the ambit and scope of the proceedings u/s 174. In these circumstances, therefore, neither in practice nor in law was it necessary for the police to have mentioned these details in the inquest report.

In case of Mahendra Rai v. Mithilesh Rai and Ors. (Supra) it has been held by the Hon''ble Apex Court as follows:

A perusal of Section 174(1) would go to show that it does not require anywhere to mention the names of assailants. It was, therefore, neither incumbent upon the police officer Kailash Prasad, P.W. 13 who prepared the inquest report, to mention the names of the assailants nor it was necessary for the eyewitnesses Jagdish Rai and Jageshwar Rai who are the witnesses to the said inquest, to insist upon the mention of names of the assailants in the said inquest report....

12. In the instant case, P.W. 2 (Basudeb Saha) has been relied upon by the prosecution and is said to be the eyewitness of the incident. He was not a witness to the inquest. In view of the observations of the Apex Court as discussed above, it is clear that the non-disclosure of the names of the assailants in the inquest report would not in any way raise any suspicion as to the veracity of the prosecution case. It cannot be said that the non disclosure of the names of the assailants would indicate fabrication and embellishment in the F.I.R.

13. P.W. 2, Basudeb Saha, has stated that Ardhendu Saha was his distant paternal uncle; On 25.6.93 Ardhendu was murdered in the morning at about 7.30 a.m. at Ganthla. It is in his evidence that Fulan Seikh, Gora Seikh, Kala Seik and Kaimuddin Seikh murdered him. He has stated that Fulan Seikh hurled a bomb from behind Ardhendu Saha and the said bomb fell into the right side of the back of Ardhendu and when it exploded, Ardhendu fell down on the ground. He has categorically stated that thereafter accused Gora Seikh, Boncha Seikh caught hold of Ardhendu forcibly and Gora Seikh being armed with "henso" cut the left side of the mouth of Ardhendu twice and also pushed the "henso" into the throat of Ardhendu which ultimately penetrated and came out upto his neck

on the reverse. He has stated that the accused persons then dragged Ardhendu upto the border of kancha road of Ganthla Bus Stand and after keeping the dead body of Ardhendu, the accused persons fled away there from. In the cross-examination on being suggested by the defence, P.W. 2 did not agree that the bomb blasted on the pitch road located to the eastern side of Kanthalgoria. From the cross-examination of P.W. 2, it is clear that there was a bomb blast and as to the location of the said bomb blast D.W. 1 was examined to shift the place of occurrence. On perusal of the evidence of P.W. 2, we are of the considered view that his testimony is direct, clear and he deposed in a very natural manner and there is nothing to disbelieve his testimony. According to the settled principle of law it is the quality of evidence that matters and not the number of witnesses. The credible evidence of even a solitary witness can form the basis of conviction.

14. As regards the injury, P.W. 14, the Autopsy Surgeon, has noted the following injuries:

1. One incised wound over the face measuring 5" X 1/2" X 1" above the upper lip starting from left Alarnasi upto 1/2" below lobule of the left ear;
2. An incised wound 1" below the injury No. 1 measuring 6" X 1/2" X 1" deep on the face;
3. One incised wound over the neck left side measuring 5" X 2" X visceral deep obliquely cutting muscles tissues carotid vessels;
4. One incised wound over the nape of the neck measuring 2" X 1 1/2" X 1" on the middle;
5. One incised wound over the back on the nape of the neck measuring 2" X 1/2" X 1" breadth below the injury No. 4;
6. Fracture of the 3rd, 4th and 5th ribs on the back and pleura was also injured, thorax cavity contained blood, right lung injured and lacerated.
7. One extensive lacerated wound over the back of thorax on the right scapular region measuring 3 1/2" X 2" X visceral deep, surrounding skin of the wound was burnt-black in colour. This injury, in my opinion, was due to bomb blast. The other injuries as I described in my opinion were caused by sharp cutting instruments.

The stomach contained 2 ounces of mucoid fluid.

The cause of death, in my opinion was due to haemorrhage and shock due to the infliction of above mentioned multiple injuries which are antemortem and homicidal in nature.

15. From the injuries noted by the doctor it becomes clear that the manner of infliction of assault and the resultant injuries sustained by the victim were corroborated by the evidence of the doctor. The ocular version, therefore, is in conformity with the medical evidence.

16. After giving anxious consideration to the submissions made by the learned Counsel of both sides and on perusal of the evidence on record, we find that the learned Trial Judge was justified in convicting the appellants and passing the sentence by the impugned judgment and order. There is no ground to interfere with the findings of the learned Judge of the Court below.

17. There is no merit in this appeal and the same is dismissed.

18. Let a copy of this judgment be sent to the Correctional Home where the appellants are detained.

19. Let a copy of this judgment along with the Lower Court Records be also sent to the learned Court below immediately.

20. Urgent Xerox certified copy, if applied, be handed over to the parties as early as possible.

I agree