

(2022) 08 CAL CK 0001
In the Calcutta High Court
Case No : Criminal Appeal No. 164 Of 2020

Gangadhar Rajowar @ Rajwar & Anr.	APPELLANT
Vs	
State Of West Bengal	RESPONDENT

Date of Decision : 01-08-2022

Acts Referred:

Evidence Act, 1872 — Section 27
Indian Penal Code, 1860 — Section 34, 300, 302, 325, 341
Code Of Criminal Procedure, 1973 — Section 154, 161, 164, 313, 437A

Citation : (2022) 08 CAL CK 0001

Hon'ble Judges : Debangsu Basak, J; Bibhas Ranjan De, J

Bench : Division Bench

Advocate : Abhra Mukherjee, Sauradeep Dutta, Saswata Gopal Mukherji, Partha Pratim Das, Manasi Roy

Final Decision : Allowed

Judgement

Bibhas Ranjan De, J

1. After being convicted and sentenced in Sessions Trial no. 01 of 2019 arising out of Sessions Case No. 100 of 2018 in connection with Joypur PS Case No. 22/2018 dated 22.03.2018 under Section 302 of the Indian Penal Code (for short IPC), by the Ld. Additional Sessions Judge, Fast Track Court No. 2, Purulia vide judgment and order dated 27.02.2020, the accused persons/appellants have filed an instant Criminal Appeal.

2. By the impugned judgment and order, the Ld. Trial Court convicted and sentenced the appellants to undergo imprisonment for life and a fine of Rs. 5000/- each for the offence under Section 302 of the IPC and in default payment thereof, the appellant were directed to undergo six (6) months' additional imprisonment.

3. The facts as unfolded by the prosecution, in short conspectus, are that a written complaint was handed over to the Inspector in charge Joypur PS by the

First Informant, Sri. Haradhan Rajowar (PW-1) on 22.03.2018 stating therein that marriage of his cousin brother was settled with one Upashi Rajowar, the daughter of Budhu Rajwar of village Nutandih but the marriage was cancelled at the instance of bride's family. As a result, their grudge increased upon his cousin brother. On yesterday night dated 21.03.2018 at about 8.00 clock at night, Ramprasad Rajowar, the cousin brother of Lankeswar called him (Lankeswar) to set fire on his brick kiln. There, Gangadhar Rajwar (A-1) and his brother Abhiram Rajowar (A-2) assaulted Lankeswar Rajwar on his head with a segment of timber to kill him. As a result of which, Lankeswar Rajowar sustained severe injury on his head and leg and became senseless on the spot. At about 02.00 a.m. at night, after getting information from Ramprasad (PW-2), Nabin Rajowar (PW-5), the elder brother of Lankeswar reached that place along with other persons and rescued Lankeswar and took him to Joypur Hospital for treatment and thereafter he was shifted to Ranchi Hospital and he ultimately died on 24.03.2018. i.e after lodgment of First Information Report.

4. After registration of the case the Investigating Officer (for short I.O), Subhankar Sarkar (PW-13) took up investigation and during investigation he prepared sketch map (Exhibit-10) recorded the statements of witnesses under Section 161 of the Criminal Procedure Code (for short Cr.P.C) and he also got statement of witnesses recorded under Section 164 Cr.P.C. He prepared seizure list in respect of controlled earth and blood stained earth under a seizure list (Exhibit 2/2). He recorded statement (Exhibit-11) of Abhiram Rajowar (A-2) and the statement (exhibit-12) of Gangadhar Rajowar (A-1) leading to which discovery was made under seizure list (Exhibit 7/2 & 8/2). On his transfer another investigating Officer, Jayanta Kumar Chakraborty (PW-14) took up investigation of this case. He collected Post Mortem Report, Injury Report and sent seized Alamats to Forensic Laboratory for examination and after completion of investigation charge sheet was submitted against the appellants under Section 341/325/302/34 of the IPC.

5. As the case was exclusively triable by the Court of Sessions, the Ld. Chief Judicial Magistrate, Purulia, committed the case to the Court of sessions, contents of which came to be registered as Sessions Trial No.01 of 2019.Ld. Sessions Judge transferred the case to the Fast Track Court No. 2 Purulia for trial. Ld. Trial Court framed charge under Section 341/325/302/34 of the IPC against both the appellants, contents of which was read over and explained to accused persons/appellants to which they pleaded not guilty and claimed to be tried.

6. To bring home the guilt of the appellants to the hilt, the prosecution has examined as many as 14 witnesses. Haradhan Rajowar, PW-1 is the first informant, Ramprasad Rajowar as PW-2, Kantiram Rajowar as PW-3, Dr. Biswajit Das as PW-4 is the Medical Officer, Nabin Rajwar as PW-5, Upasi Rajowar as PW-6, Sk. Dayud as PW-7, Asit Kumar as PW-8, Bostobihari Das as PW-9, Chandra Das as PW-10, Debdas Rajowar as PW-11, Shankar Kumbhakar as PW-12 first I.O, Subhankar Sarkar as PW-13 and 2nd I.O Jayanta Kumar

Chakraborty as PW-14.

7. On behalf of the prosecution a good number of documents were admitted in evidence as Exhibit 1 to 12.

8. After the conclusion of the persecution evidence, statement of accused was recorded under Section 313 Cr.P.C, but they claimed themselves to be innocent and also stated to have been falsely implicated.

9. The Ld. Trial Court, after appreciation of all the evidence and documents available on record came to his finding as follows:

" In view of the discussion as a whole I have no hesitation to hold that the prosecution has been able to prove beyond doubt that in the night of 21.03.18 Abhiram Rajowar and Gangadhar Rajowar had assault of which he sustained injury and later on succumbed to the injuries. I have no hesitation to hold that the prosecution has been able to prove that both the accused persons assaulted Lankeswar Rajowar. It appears from the testimony of PW4 Dr. Biswajit Das who examined the victim at Joypur BPHC and on examination he found a deep 3-4 cm. Laceration on left temporal region of the victim, for which superficially stay suture given. He also found haematoma over frontal region of scalp. The patient was disoriented and vomiting plus. As the condition of the patient was not good, he referred the patient to higher center. He also opined that if a person is hit with any hard substance, this type of injury may occur. The injury was on the vital part of the body.

From the medical evidence it appears that the victim sustained head injury with sharp cut object. The place of injury was head which is a vital part of the body.

The nature and place of injuries sustained by the victim speaks that was inflicted intentionally and the same was sufficient to cause death in ordinary course of nature. The defence could not bring its case under any of the exception as excepted in section 300 of IPC on the other hand the prosecution has been able to prove that both the accused persons have committed culpable homicide by causing injury upon the victim intentionally which was sufficient in ordinary course of nature to cause death thus both the accused persons are guilty of committing culpable homicide amounting to murder and thus they are liable to be convicted under Section 302 IPC.

Hence, it is,

ORDERED

That both the accused persons namely; Abhiram Rajowar and Gangadhar Rajowar are found guilty of the offence punishable under Sections 302 of IPC. Accordingly, they are convicted for the offence punishable under section 302 IPC.

The convicts are taken into custody and their respective bail bond is hereby cancelled.

So far imposition of sentence is concerned, the convicts would be heard on the point of sentence on 28.02.2020 at 2-30 p.m.

The convicts be remanded to custody with a direction upon the Superintendent of District Correctional Home, Purulia to produce the convicts on 28.02.2020 at 2-30 p.m.”

10. Mr. Abhra Mukherjee, Ld. Advocate appearing for the appellants has vehemently argued and assailed the evidence of so called eye witnesses (PW-2 and PW-3) and has submitted that though according to eye witnesses Lankeswar Rajowar (deceased) was assaulted indiscriminately on the back side of his head with the help of split wood and lathi but the doctor (PW-4) who treated the deceased found a deep 3-4 C.M. laceration on left temporal region of head and also found haematoma over frontal region of scalp. It is submitted that it is not believable that indiscriminate assault on the backside of the head of the deceased will cause only a single injury that too on left temporary region instead of occipital region. Thereby, evidence of eye witnesses has created a reasonable doubt.

11. Mr. Mukherjee, further assailed the evidence of PW-2 and PW-5 and submitted that First Information of the alleged incident was given to Police on the intervening night of 21/22.03.2018 at about 2.30 a.m. but the same was withheld and it also appears that Police visited brick field prior to lodgment of First Information Report (Exhibit-1) on 22.03.2018 at 10.35 hours.

12. Mr. Mukherjee has further contended that evidence of PW-7, PW-13 and sketch map with index (exhibit-10) clearly shows that the place of occurrence has been shifted from brick field to the banyan tree.

13. Mr. Mukherjee challenged the seizure of axe and split wood which was not supported by the seizure witnesses (PW-9 and PW-10). It is further submitted that alleged seizure was not made within the meaning of “leading to discovery” under Section 27 of the Evidence Act. Mr. Mukherjee further submitted that the seized weapons were never referred to the doctor (PW-4) to solicit his opinion with regard to injury by those alleged weapons.

14. Mr. Mukherjee has further submitted that other charge sheet witnesses namely Manoj Rajowar, Tarekshwar Raopwar, Debdas Rajowar, Dasia Rajowar who accompanied Lankeshwar (deceased) to Joypur health clinic, were not examined in this case. Further, female member who attended the alleged feast at the brick field, were not also examined in this case. Before parting with Mr. Mukherjee stated that prosecution hopelessly failed to prove conclusively that the death of Lankeshwar (deceased) was a homicidal one.

15. In support of his contention, Mr. Mukherjee relied on the following cases:

AIR 1975 Supreme Court 1727 (Ram Narain v. The State of Punjab).

AIR 1980 Supreme Court 1873 (Purshottam v. State of Madhya Pradesh).

AIR 1987 Supreme Court 826 (Amar Singh v. State of Punjab).

AIR 1994 Supreme Court 1539 (Sri Niwas v. Ram Bharosey and others).

AIR 2016 Supreme Court 146 (State of Punjab v. Bittu and another).

(2017) 1 SCC (Cri) 45 (Mahavir Singh v. State of Madhya Pradesh).

(2018) 2 SCC (Cri) 423 (Dinesh v. State of Haryana).

(1997) SCC (cri) 857 (Vijender v. State of Delhi).

16. Per contra, Mr. Swsata Gopal Mukhejee, Ld. Public Prosecutor, on behalf of the State has submitted that PW-2 and PW-3 qua witnesses to the occurrence corroborated the entire prosecution case and their evidence has been further corroborated by the doctor (PW-4) who found a deep 3-4 c.m. laceration on left temporal region of the deceased. Accordingly, Mr. Mukherjee supported the impugned judgment passed by the Ld. Trial Court.

Decisions

FIR

17. At the very outset, we would like to discuss about First Information Report (for short FIR) to the Police Station, PW-1, (Haradhan Rajowar), has deposed in his evidence that he had been to Police Station at about 09.00 a.m. and lodged FIR within 10.30 a.m. and after lodgment of FIR he returned to his house. FIR (Exhibit-1) shows that it was lodged on 22.03.2018. Therefore, it comes to our view that Haradhan Rajowar (PW-1) lodged FIR in between 09.00 a.m. to 10.30 a.m. on 22.03.2018. On receipt of the said FIR Joypur PS Case No. 22/2018 under Section 341/325/307/34 IPC was started.

18. PW-2, Ramprasad Rajowar, claiming to be an eye-witness, has deposed in his cross-examination that after the incident Lankeshwar (deceased) was at first taken to Police Station and therefrom he was shifted to Joypur Hospital. He has further testified that Police did not interrogate him at that time but Police interrogated Manoj and Nabin Rajowar (PW-5) and Police noted down the statement of Manoj and Nabin (PW-5). He met police at 7/8 a.m. on the following morning at his brick field.

19. PW-5, Nabin Rajowar, has stated in his evidence that he met Police at 2.30 a.m. in the intervening night of 21/22.03.2018 and he made statement to Police who recorded his statement.

20. From the aforesaid discussion of the prosecution evidence it is clear that prior to lodgment of FIR (Exhibit-1) there was an information to the Police regarding the incident alleged in this case by the PW-5 (Nabin Rajowar).

21. In this regard, it would be appropriate to refer to the provision of Section 154 of Cr.P.C. which runs as follows:

"Section 154. (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

.....

(a)

(b)

(c)

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3)....."

In our case prosecution failed to explain as to why the First Information given by PW-5 (Nabin Rajowar) as to a cognizable offence was not acted upon. In these circumstances, subsequent improvement by filing a new complaint in relation to the same incident, cannot be ruled out.

Place of Occurrence

22. To prove the incident alleged in this case prosecution examined two eye-witnesses namely Ramprasad Rajowar (PW-2) and Kanthiram Rajowar (PW- 3) who is brother in law of PW-2.

23. PW-2, in his evidence, has testified that the entire incident took place in his brick field and the place was illuminated with gas light. PW-3 (Kanthiram Rajowar) also stated in his evidence, that the incident took place in the brick field while he was sitting with Lankeshwar (deceased) and Ramprasad. But PW-7 (Sk. Dayud), claiming to be the driver of ambulance has deposed that he brought one patient to Joypur Hospital from Natundih near a Banyan Tree. In cross-examination PW-7 further clarified as follows:

"The said banyan tree is situated on the right hand side of the turning of the road which runs to Natundih village. I brought the injure from that banyan tree to Joypur Hospital."

Now, we come to the evidence of PW-13 (first I.O) to find out the actual place of occurrence. PW-13 in his evidence stated as follows:

"Haradhan Rajwar showed me the place of occurrence.

I referred about only one G.D entry regarding information about the incident.

The said G.D No. is 903 dt. 22/03/2018 at timed 10.35 a.m.

The notation 'P' in the index of the rough sketch map indicates the P.O.

Q: Is there any notation as 'P' in the rough sketch map?

Ans: It is there. After 'P' there is a circle which is the place where fire was set.

There is no explanation to that effect in the C.D.

It is fact the total area has been shown and marked as 'A'.

It is fact that the index indicates the same to be paddy field of Durga Charan Rajwar.

I did not cite him as witness. I stayed at Joypur P.S. as S.I. of Police for about a period of 3 ½ years."

24. PW-13 (1st I.O) prepared the sketch map with index (Exhibit-10). As per index 'P' noting stands for place of occurrence which is a paddy field. Again as per sketch map noting 'A' stands for place of occurrence which is also a paddy field. According to index place of occurrence is in the field of Durga Charan Rajwar. There is nothing mention about any banyan tree in the sketch map.

25. The aforesaid evidence has really created a doubt in the mind of this Court regarding actual place of occurrence.

Alleged incident of assault.

26. In this case prosecution has adduced evidence of PW-2 and PW-3 to prove the alleged assault. PW-2 has deposed in his evidence that he invited Lankeshwar Rajwar (deceased) Abhiram Rajwar (A-2) to attend the feast at his brick field. Upashi Rajwar (PW-6) happens to be the cousin sister of Abhiram (A-2). Marriage was settled between Upashi Rajwar and Lankeshwar Rajwar but the marriage could not take place. On the alleged date of incident altercation took place between Abhiram Rajwar (A-2) and Lankeshwar Rajwar over the issue of breakup of marriage and Abhiram (A-2) left the place. After 15 minutes Abhiram (A-2) returned with Gangadhar Rajwar (A-1) and Netai Rajwar. At that time, PW-2 himself, Kantiram Rajwar (PW-3) and Lankeshwar (deceased) were present in the brick field. Abhiram (A-2) hit Lankeshwar on the back side of his head. Gangadhar (A-2) hit Lankeshwar with axe and Netai Rajwar with lathi and as a result Lankeshwar fell down. From the evidence of PW-2 it further appears the PW-2 and Kantiram (PW-3) came to rescue Lankeshwar but they were also assaulted.

27. PW-3 also corroborated PW-2 with regard to the fact that at the time of incident PW-2, PW-3 and Lankeshwar were present in the brick field. There was scuffling between Lankeshwar and Abhiram (A-2) regarding marriage dispute. Abhiram (A-2) left the brick field. After 15/20 minutes Abhiram (A-2) returned with his brother Ganga and son Netai and attacked Lankeshwar from back side. Abhiram (A-2) was armed with a split wood, Ganga was armed with axe and Netai with Lathi. They indiscriminately assaulted Lankeshwar (deceased) on his

head. Those persons also assaulted them.

28. Therefore, the evidence PW-2 and PW-3 clearly manifest that Lankeshwar was assaulted by three persons with split wood, axe and lathi indiscriminately but doctor Biswajit Das (PW-4) stated in his evidence as follows:

" The history was stated by the patient party.

On clinical examination I found a deep 3-4 c.m. laceration on left temporal region, superficially stay suture given. I also found hematoma over frontal region of scalp. The patient was disoriented and vomiting plus.

As the condition of the patient was not good I referred the patient to higher center."

29. Therefore, doctor (PW-4) found one laceration injury on the left temporal region and one hematoma over frontal region of scalp but doctor did not find any injury on the back side of the head of the deceased though both the witnesses (PW-2 and PW-3) has stated that victim was assaulted on the back side of his head indiscriminately by three persons. From the evidence of doctor it appears that one Dasia Rajowar brought the patient before him for treatment and said Dasia Rajowar has not been examined in this case. It is further surprising to note that PW-2 in his cross-examination specifically admitted as follows:

" It is fact that on that date Netai did not visit my brick field."

Thereby, it has become doubtful as to the number of persons taking part in the incident of assault as it is specific case of the prosecution that victim was assaulted by Abhiram, Ganga and Netai.

30. In Ramnrayan (supra), Pursuttam (supra), Amar Singh (supra), Sri Niwas (supra), Bittu (supra), Mahabir Singh (supra), Dinesh (supra) and in Vijender (supra) Hon'ble Apex Court handed down a ratio that it is obvious that where the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence.

31. Further, it is relevant to mention that seized weapons were not produced before the doctor (PW-4) who treated the deceased at the first instance in Joypur BPHC prior to shifting to Ranchi Hospital. Thereby, it could not be ascertained as to probable cause of injury by the use of any of the weapons seized under the seizure lists (Exhibit 7/2 & 8/2).

32. It takes us aback to the fact that in this case investigating agency could not produce any bed head tickets showing treatment of deceased in Ranchi Hospital. This apart, in this case prosecution neither produced any Post Mortem Report nor examined any doctor who conducted Post Mortem over the body of the deceased. Thereby, prosecution hopelessly failed to adduce any evidence showing homicidal death.

Recovery of weapon

33. Before entering into this issue it would be appropriate to refer to Section 27 of the Evidence Act which runs as follows:

"27. How much of information received from accused may be proved.- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

34. Therefore, no amount of confession or any statement made to the Police except to the portion of statement specifically prescribed as admissible and relevant under Section 27 of Evidence Act, can be proved against the accused. That goes to show the fact or statement or information (deposed to a Police Officer) that leads to the discovery of a fact or material object alone is relevant and admissible a Criminal Case. Any other information extracted from the accused while he is in custody, is inadmissible and hence cannot be proved against him in a Court.

35. PW-13 (1st I.O) has testified as follows:

" One axe and one fire wood has been recovered. I recorded the statement of Abhiram Rajwar. This is the said statement leading to which discovery was made.

The said statement be marked as (Ext-11)

This is the statement of Gangadhar Rajwar recorded by me.

Leading to such statement the Kural was distinctly discovered.

The said statement of the accused be marked as (Ext.-12)"

36. On careful scrutiny of the evidence of PW-13 (1st I.O) together with exhibit 11 and 12 it appears that I.O PW-13 recorded statement of A1 and A2 and those statement were admitted in evidence as exhibit 11 and 12. But none of the statements can be said to be a statement leading to discovery. Statement showing hand over of weapons to the I.O by the accused confessing guilt does not come under the exception to confession within the meaning of section 27 of the Evidence Act. Consequently, alleged recovery of weapons cannot be said to be legal.

Motive

37. The proof of motive is not sine qua non in all Criminal Cases. Failure to proof motive does not necessarily fatal to prosecution case. But in this case prosecution led evidence showing motive behind the alleged incident. PW-2, PW-3 and OW-5 have testified in their respective evidence that the dispute of marriage between Lankeshwar (deceased) and Upashi Rajwar (PW-6) boiled down to the incident alleged in this case. PW-1 and PW-5 have said in their evidence that marriage between deceased and Upashi (PW-6) was settled and

even they went to Purulia to get their marriage registered. But, Upashi (PW-6) in her evidence categorically denied any such settlement of marriage far to speak of going to Purulia for marriage registration. Upashi Rajwar (PW-6) has deposed that she simply refused the proposal of marriage. On the contrary, it transpires from the evidence of PW-2 and PW-3 to the effect that Lankeshwar (deceased) was an employee of the brick field under Ramprasad Rajwar (PW-2) and nothing was paid to Lankeshwar. Therefore, motive alleged in this case cannot be said to have been proved by the prosecution beyond doubt.

38. All the above circumstances, lead to the only inference that the prosecution failed to bring home its case. It appears that the testimonies of PW-2 (Ramprasad Rajwar) and PW-3 (Kanthiram Rajwar) are highly doubtful and do not inspire confidence of this Court though death of Lankeshwar has been well established but it alone cannot be sufficient to convict the accused persons as it is not substantive evidence. Even the medical evidence available on record, could not prove any homicidal death. Thus, the order of conviction of the accused persons cannot be sustained.

39. In the light of the above discussion the instant appeal is allowed.

40. In the result, conviction and sentence imposed on the appellants under Section 302 of the IPC is set aside and they are acquitted of the said charge. The appellants are reported to be on bail, therefore, their bail bond shall continue for a period of six (6) months from today in view of the provisions of Section 437-A of the Criminal Procedure Code.

41. All pending applications, if any, stand disposed of accordingly.

42. Let a copy this judgment along with the Trial Courts record be sent back forthwith.

43. All parties shall act on the server copies of this judgment duly downloaded from the official website of this Court.

44. Urgent Photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

45. I Agree.