

(2013) 02 CAL CK 0092

In the Calcutta High Court

Case No : C.R.A. No. 263 of 2012 with C.R.A.N. No. 2350 of 2012

Humayun Mia and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 324

Citation : (2013) 2 CALLT 71

Hon'ble Judges : Tapen Sen, J;Kanchan Chakraborty, J

Bench : Division Bench

Advocate : Sekhar Basu, Mr. Shiladitya Banerjee and Mr. Ranadeb Sengupta, for the Appellant;Prasun Dutta and Mr. Subrata Roy, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—This Appeal arises out of a Judgment and Order dated 25.4.2012 passed by the learned Additional Sessions Judge, 1st Court, Malda in Sessions Trial No. 12 of 2012 corresponding to Sessions Case No. 245 of 1997 arising out of Kaliachak Police Station Case No. 3 dated 5.11.1980 under sections 147 /148 /149 /341 /324 /326 /364 /302 and 34 of the Indian Penal Code whereby and whereunder the said learned Court was pleased to find the Appellants guilty of the offences punishable u/s 302 /34 of the Indian Penal Code and convicted them u/s 235 of the Code of Criminal Procedure and, as a consequence, sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each. In default, to suffer simple imprisonment for a further period of 6 months each. He however also ordered that the period of detention already undergone by them, shall be set off against the term of substantive punishment so awarded. A written complaint was made by one Lakshman Chandra Mondal, son of Late Chandan Mondal resident of village Kupkundi, P.O. Bedrabad in the District of Malda wherein, while naming (1) Humayun Mia (son of Jamshed Ah Biswas); (2) Jamshed Ali Biswas; (3) Sentu Mia; (4) Mumtaj Ali; (5) Meghu Mia; (6) Eslam Mia; (7) Majed Ali; (8) Attaj Mia;

and (9) Afzal Mia, he alleged that on 4.11.1980 at about 6 p.m., his brother Sishir Mondal was returning from the house of Jatin Karmakar of Tewaritola. The accused persons attacked him with various sharp weapons in front of the farm house of Jamshed Ali Biswas. He called out the name of the informant for help who, at the time, was returning from the field after cutting grass. Harish Mondal, son of Chakku Mondal, Sagen Mondal, son of Late Mahendra Mondal were also returning from the field after planting "Patal Lata". The three of them rushed and saw that the accused persons were assaulting the informant's brother mercilessly. Since they were armed with various weapons, they went to the nearby village from where, they were able to gather people and all of them went to the place of occurrence but on reaching there, they did not find the Respondents there and his brother, Sishir Mondal had also vanished. They searched him for the whole night and apprehended that Sishir Mondal had been taken somewhere to be killed.

It appears that out of the 9 accused persons named above, charges were framed only as against these Appellants who were put on trial but the others were not charge sheeted. These Appellants and one Majed Sk. were charged with the offence that on the 4th November, 1980, they had intentionally committed the death of Sishir Mondal in furtherance of a common intention.

2. Learned Additional Sessions Judge, 1st Court. Malda while dealing with the case, held the accused persons guilty u/s 302 /34 of the Indian Penal Code but insofar as Majed Sk. was concerned, he directed that he could not be sentenced straightway without first giving him an opportunity to prove his date of birth as on the date of occurrence. He therefore directed that based on the result of the enquiry, on his date of birth, further consequences would follow in accordance with law.

3. However, insofar as the remaining 4 accused persons were concerned and who are the Appellants before us, he passed the impugned Judgment referred to above. It appears that during the course of investigation, the dead body of Sishir Mondal was found and it was recovered from the "Pagla Nadi" at the instance of the accused namely Humayun Mia. The prosecution could not produce more than 4 prosecution witnesses. The defence did not adduce any evidence. The complainant could not be examined because he had died. Similarly, the investigating officer of the case as well as the Autopsy Surgeon could also not be examined as they had also died.

4. The star witness therefore is Nagen Mondal who was named in the formal FIR as being one of the persons who had rushed to the scene of occurrence with Humayun Mia and the complainant when they saw the complainant's brother being mercilessly assaulted. He has stated in his examination that while returning from his field after planting "Patal Lata", he heard Sirish Mondal crying out and calling Lakshman Mondal. He, along with Harish Mondal, Lakshman Mondal and Ramesh Mondal who were all also planting Patal Lata, went to the place of occurrence and found the 5 accused persons assaulting Sishir Mondal

and they were said to have killed him by "Noose of Rope". He says thereafter that he returned to the village and informed the local people. They then went to the place of occurrence but did not find anybody and then he heard that the dead body of the Sishir Mondal had been found from the bank of the "Pagla Nadi" at Raipur Ghat but he had not seen the dead body.

5. This witness has referred to Harish Mondal as well as Ramesh Mondal but no explanation was coming forth as to why these two persons were not examined. The other interesting feature about this witness is that he has stated that the accused persons had killed Sishir Mondal by a "Noose of Rope". However from the statement and/or allegations made in the written report, it is evident that Lakshman Mondal had specifically alleged that they saw the accused persons assaulting Sishir Mondal with various weapons. This, therefore, is a very serious contradiction in the statement of this witness and the statement of the complainant.

6. Another interesting feature about the evidence of this person is that whatever he said, was for the first time in Court because he has himself stated that "I am saying this incident for the first time". In other words, he was never examined by the Police prior to his being put on the dock as a prosecution witness. Yet another interesting feature about this case is that while the complainant alleged assault by various sharp weapons and while PW 1 referred to "Noose of Rope", the post mortem report, strangely, refers to the opinion of a doctor saying that death was due to "intestinal injury". Learned Counsel for the State has not been able to explain the aforesaid discrepancies and therefore, we are not inclined to give any credence to the statement of P.W.1. P.W.2 is a person who says that he had signed the seizure list (Exhibit-1) but in his cross examination he had merely stated that the Police had asked him to sign on a piece of paper. We are not sure as to what paper he refers to. He is not an eye-witness to the occurrence nor was he mentioned by the complainant as one of the persons who had gone along with them or had seen the occurrence. P.W.3 is Dijendra Nath Das. He was the scribe of the written complaint. Apart from the fact that he wrote the Complaint, he said that he knew nothing more than that--"I do not know anything else." P.W.4 is one Dr. Himadri Kr. Ari. He was the Superintendent, District Hospital at Malda. It appears that he was brought by the prosecution to prove the post mortem report because all that he says is that he did not know as to whether the autopsy surgeon namely Dr. J. Mondal was posted in the said hospital or not on 6.11.1980. He also makes a statement that in the year 1980 itself, he was a student of Class-IX.

7. The aforementioned evidences which are all skeletal in nature, do not inspire confidence in us and this Court is completely at a loss to understand as to how the learned Additional Sessions Judge, 1st Court, Malda came to the conclusion that these Appellants are guilty. The learned Judge has recorded that the star witness namely P.W. 1 Nagen Mondal, was 65 years old on the date when the Judgment was being written. The incident had took place 30 years ago in 1980.

He has only picked up what this witness had stated without trying to give his reasons with regard to the gross contradictions recorded by this Court in the foregoing paragraphs. We therefore are not in a position to accept the reasons of the said learned Court below. Similarly, the statement of P.W.2 has also been accepted without considering the statement made by him to the effect that he did not know as to how Sishir Mondal was murdered. The statements of P.W.3 and P.W.4 have also been accepted by the learned Court in a most perfunctory manner. Considering the aforementioned perfunctory approach of the Court below and also taking into consideration the gross contractions made in the statements, mere reference to various judgments cannot rationalise or justify the passing of a judgment holding the Appellants guilty and sentencing them in the manner that the lower Court has done. Considering the aforementioned facts and circumstances and also considering the fact that there was no corroboration in the absence of the Complainant as well as in the absence of the Investigating Officer and the Autopsy Surgeon, the Order/Judgment of the learned Court below holding the Appellants guilty and sentencing them to undergo rigorous imprisonment for life appears to be grossly irregular. We therefore have no option but to set aside the said Judgment and allow this Appeal.

Let the Appellants be released from Jail immediately since, it has been stated, that they are in Jail right from the beginning.

Let the lower Court records be also sent down forthwith.

CRAN 2350 of 2012

This is an Application on behalf of the Appellants for suspension of the operation of the Judgment and for their release on bail pending for hearing of the Appeal. In view of the Judgment above, the aforesaid Application will deemed to have been disposed of.

Upon appropriate Application(s) being made, urgent Photostat Certified copy of this judgment be given/issued expeditiously subject to usual terms and conditions.

Kanchan Chakraborty, J.

I agree.