
(2018) 06 CAL CK 0175
In the Calcutta High Court
Case No : C.R.A. 498 of 2013

Jitu Roy & Ors.

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 20-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 149, 302, 307, 326, 341
Code Of Criminal Procedure 1973 — Section 428, 437A

Citation : (2018) 06 CAL CK 0175

Hon'ble Judges : JOYMALYA BAGCHI, J;RAVI KRISHAN KAPUR, J

Bench : Division Bench

Advocate : Anjan Bhattacharya, Debabrata Acharyya, Sital Samanta, Sudip Ghosh, Apurba Kumar Datta

Final Decision : Partly Allowed

Judgement

Joymalya Bagchi, J.

The appeal is directed against the judgment and order dated 30.05.2013 and 03.06.2013 passed by the learned Additional Sessions Judge, 2nd Court,

Dakshin Dinajpur at Balurghat in Sessions Case no. 143 of 2014 (Sessions Trial No. 23 of 2011) convicting the appellants for commission of offence

punishable under Section 302/149 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for life and shall pay a fine of

Rs.50,000/- each, in default to suffer rigorous imprisonment for another five years more.

Prosecution case as alleged against the appellant is to the effect that appellant no.1 Jitu Roy was married to Sumita Roy, P.W.1, the defacto

complainant in the instant case. From the marriage two children were born. Over marital discord, Sumit informally separated herself from Jitu six or

seven months prior to the incident and started living with the victim Ranjit as husband and wife. It is alleged over such enmity on the fateful day

accuseds Jitu, Bipul, Nirmal, Manju and Amullya assaulted Ranjit on the potato field at 6 A.M. with bamboo sticks. But he escaped from their clutches

and started running towards the village path and thereupon the aforesaid accuseds along with others namely Ukil, Sushil, Nato, Anup, Prosenjit, Arun,

Bapi, Dukhu and Subal again assaulted the victim.

As a result he fell down on the ground. His brother, Charu Roy tried to resist and was assaulted. Akesh Roy, Mahadeb Roy, Srimanta Roy,

Chandramohan Roy also tried to rescue the victim but failed. Victim Ranjit Roy was taken to Tapan Hospital and thereafter referred to Balurghat

District Hospital. On the complaint of P.W.1 Sumita Roy, Tapan P.S. Case No.109 of 2010 dated 11.05.2010 under Sections 341/326/307/34 IPC was

registered. Subsequently, victim Ranjit expired on 15th May, 2010 and Section 302 IPC was added to the FIR. In conclusion of investigation charge

sheet under Sections 341/326/307/34/302 IPC was filed against thirteen accused persons.

Case of the accused persons (who were juveniles) were separated and the case of the appellants was committed to the court of sessions and

transferred to the court of Additional Sessions Judge, 2nd Court, Dakshin Dinajpur, Balurghat for trial and disposal. Charges were framed under

Sections 302/149 IPC against the appellants. The appellants pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 13

witnesses and exhibited a number of documents. The defence of the appellants was one of innocence and false implication. The defence, however,

did not examine any witness to probabalise its case.

In conclusion of trial, the trial judge by judgement and order dated 30.05.2013 and 03.06.2013 convicted and sentenced the appellant, as aforesaid.

Hence, the present appeal. Mr. Acharyya, learned Counsel appearing for the appellant nos. 5 to 9 argued that P.W.1 the first informant has not

supported the prosecution case. She has even disowned the first information report recorded in the instant case. He also submitted that there is two

days delay in registering the first information report which has not been explained. On the other hand, names of the appellants had not transpired in the

inquest report or the injury reports of the deceased or P.W.2 Charu who claimed

to have been injured in the course of the incident.

Motive of the crime has been developed for the first time in the course of trial. Hence, the implication of the appellants in the instant case is clearly an

afterthought. He further submitted that P.W.2 is a relation of the victim and his version ought not to be relied upon. He criticised the evidence of

P.W.3 and 5 and submitted that the version of P.W.3 is an embellished one, while P.W.5 was examined for the first time in court. Presence of P.W.s

3 and 5 at the place of occurrence has also not been corroborated by P.W.2. He, accordingly, prayed for acquittal of appellant nos.5 to 9.

Mr. Bhattacharya, learned counsel appearing on behalf of the appellant nos.1 to 4 has adopted the submissions of Mr. Acharyya and submitted that

evidence of P.W.2 and other materials on record would show that his clients did not assault the victim on the village road where it is claimed that he

was assaulted with lathi. Drawing our attention to the medical evidence, he submitted that the head injury was caused due to assault on the village

road and cannot be attributable to his clients. He, accordingly, prayed for acquittal of appellant nos.1 to 4.

P.W.1, Sumita Roy is the wife of the victim and the defacto complainant. She did not support the prosecution case in court. However, she admitted

that her husband was murdered on the village road. She rushed to the place of occurrence and found that her husband was lying with marks of injury

on his head. Victim was taken to Tapan Hospital and then to Balurghat District Hospital. Thereafter victim was referred to Siliguri for better

treatment. Akesh and Jugal carried him to Siliguri. He was admitted to Dr. Changâ??s Nursing Home for seven days where he succumbed to his

injuries. She proved the written complaint (Ext.1). However, in cross-examination she stated that the complaint was written at party office and that

she was not aware of the contents of the said complaint. She also claimed that there was enmity between Arun and P.W.2 Charu over the marriage

of daughter of Charu with the said appellant against his will.

PW 2, Charu Roy is the most vital witness in the instant case. He deposed that he is the brother of the deceased. The incident occurred on a Sunday

in the month of May two years ago. Ranjit, the victim, was assaulted by Jitu, Amullaya, Sushil and Ukil. Thereafter, the victim fled away from the

place of occurrence and was again assaulted by Subol Roy, Kangaru Roy, Bapi

Roy and Bipul Roy by means of lathi. As a result he received injury on his head and other parts of the body. P.W. 2 tried to save the victim (his brother) and was also assaulted and suffered injuries and was treated.

Subsequently, Chandra Mohan and Srimonta came to the place of occurrence. The cause of dispute was that a calf gifted by Sumita (PW 1) to Jamini

(PW6) during her marriage to Jitu, had been taken away by Sumita after she started living with the victim, Ranjit. He further deposed that Ranjit was

taken to Tapan hospital where he was admitted. Subsequently, for better treatment Ranjit was shifted to Balurghat hospital. Finally, he was shifted to

Siliguri for better treatment, where he died. In cross-examination, he stated that they lodged a case at PS when they were admitted at Balurghat

hospital.

PW 3, Mahadeb Roy deposed that the incident occurred two years ago on 9th day of May. Ranjit was going to his field when he was assaulted by

Jitu, Sushil, Amullaya Ukil, Kangaru Roy and Subol Roy. He fled away from the field shouting "bachhao bachhao". Nirmal Roy, Anup Roy,

Nato Roy, Bapi, Arun were standing on the village road and they again started to assault Ranjit by lathi. Ranjit received lathi blows on his head and

other parts of body. As a result, he fell down. He along with Charu Roy, Akesh Roy, Srimonto Roy, Chandra Mohan Roy were present there. Charu

tried to save Ranjit, he also received a blow of lathi on his head. P.W.3 fled away from the place of occurrence. Ranjit was carried to Tapan hospital.

Thereafter, he was referred to Balurghat hospital. Finally, he was shifted to Siliguri for better treatment where he succumbed to his injuries. In cross-

examination, he was confronted with his previous statement made before the police.

PW 4, Srimanta Roy did not support the prosecution case and was declared hostile. PW 5 Akesh Roy deposed that on the date of the incident Jitu

Roy, Amullaya Roy, Ukil Roy, Sanju Roy, Subol Roy assaulted Ranjit on the field. Ranjit tried to escape but Jitu and other accused persons chased

him. In the meantime accused persons Nato Roy, Anup Roy, Bipul Roy, Bapi Roy, Nirmal Roy and Prosenjit Roy assaulted Ranjit on the village road.

Ranjit was assaulted by bamboo stick and branch of tree. Ranjit suffered injury on his head and other parts of the body. He witnessed the incident. He

along with Charu Roy, Srimonta Roy and Mohadeb Roy went there to rescue him.

Charu was assaulted on the head. Charu and Ranjit were taken to Tapan hospital and thereafter Ranjit was shifted to Balurghat hospital and then to Siliguri for better treatment. Doctors advised major surgical operation at the head of Ranjit. In the evening Darogababu visited their village. Darogababu seized lathi and branch of tree under a seizure list (exbt.

2). In cross-examination, he admitted that he revealed the incident for the first time in court. He was not interrogated by darogababu.

PW 6 Jamini Roy deposed regarding the motive of the crime. She deposed that Sumita Roy was initially married to Jitu. At that time she gave her a

calf but after she had married Ranjit she took back the calf. Over such issue salish took place at her house on 8.5.2010 at 7 P.M. During salish dispute

cropped up between Jitu and Sumita. Jitu threatened Ranjit that he will face dire consequences. On the next morning she heard that Ranjit was killed

by Jitu. PW 8, ASI, Mrinmoy Ghosh conducted inquest over the dead body of the victim and proved inquest report (Ext.3). He also proved the

postmortem report (Ext.4). PW 9, Dr. Bipasha Ghosh deposed that on 09.05.2010 she was attached to Tapan Block Primary Health Centre. On that

date she examined Charu and found lacerated cut injury over vault. Blunt weapon was used to cause such injury. She proved the injury report

(Exbt.6). She stated that if any one was hit with bamboo or branches of tree, such injury might be caused.

PW 10, Dr. Ashok Kumar Acharjee was posted as M.O. Surgeon at Balurghat District Hospital on 09.05.2011. On that day he examined patient

Ranjit Roy who had suffered head injury. He conducted CT scan of brain. Report showed epidural haemorrhage involved in the left parietal convexity

with significant mass effect. Mid line shift 0.52 cm. Bilateral temporo-parietal haemorrhage contusions with fracture of left parietal bone. The patient

was referred to any State Medical Hospital on 10.05.2010. He opined that such type of injury might be caused if any one is hit with blunt weapon or

branches of tree. PW 11, Dr. Dibakar Chhetri was attached North Bengal Medical College and Hospital. He conducted post mortem over the body of

the victim and found the following injuries.

- 1) Scabbed abrasion over left side of face 1/6â??X1/8â??.
- 2) Scabbed abrasion over left face 1/6â??X1/10â??.
- 3) Curvilinear shaped incised wound over left frontal, parietal temporal 8â?

inches in circumference. On opening suture is found to be scalp bone deep with evidence of surgical intervention in the form of surgical circular over left parietal temporal bone with stiches over meninges. He opined that death was due to the injury over head which is ante mortem in nature with evidence of surgical intervention.

He further deposed that injury no.1 may be caused by blunt weapon. Injury no.3 may be caused due to surgical intervention. PW 13, Amitava Sarkar is

the first investigating officer in the instant case. He proved the formal first information report (Exbt.8). He went to the place of occurrence and drew

sketch map. He drew sketch maps with index of both the places of occurrence (Ext.9 and 9A). He examined the witnesses. He seized bamboo sticks

and three cut pieces of eucalyptus branches under seizure list (Ext.2/A). He collected postmortem report. He collected the injury report of Charu and

Ranjit Roy on 19.05.2010. He examined the de facto complainant who in deposition stated the motive of commission of offence. PW 7, Biswajit

Bhattacharjee is the second investigating officer who concluded the investigation and filed charge sheet.

From the evidence on record it appears that the prosecution case is hinged on the evidence of PW 2, an injured witness, and PW 3 to 5. PW 1, wife of

the victim and FIR maker, has not supported the prosecution case. Relying on her evidence learned Counsels for the appellants have strongly argued

that the prosecution case is an afterthought and the appellants have been falsely implicated therein. It is also pointed out that there is some delay in

lodging the FIR and the names of the appellants are mentioned in the inquest report of the victim.

To address such issues raised by the appellants, one has to weigh the evidence of PW 1, the de facto complainant, qua that of PW 2, the injured

witness. Analysis of their evidence reminds me of the old adage "blood is thicker than water". PW 2 is the brother of the deceased, Ranjit and

was injured in the incident while P.W. 1 was living with the victim as husband and wife after having informally divorced Jitu, the principal accused in

this case. Hence, PW 2, the brother of the victim, true to the consanguineous relation between themselves has sought to implicate Jitu and others as

the assailants of his brother, PW 1 appears to have made a volte face in order to screen the real offenders. Nonetheless she admitted that her second

husband Ranjit suffered head injuries at the place of occurrence and died.

Although in chief she proved the written complaint lodged by her with the police but in cross-examination she stated that the complaint was scribed at

the party office and the version was not narrated to her. Her inconsistent version is unreliable as it appears from the evidence of PW 13 (Investigating

Officer) that he received the written complaint from PW 1 in the instant case. In view of the aforesaid evidence on record I find it difficult to accept

the version of PW 1 that she was unaware of the contents of the complaint which was lodged under her signature. Hence, I am unwilling to throw out

the prosecution case on the sole premise that the first informant PW 1 has not supported the same in Court. On the other hand the prosecution version

is wholly established from the evidence of the PW 2, the injured witness. He narrated the incident which occurred in the morning of the fateful day,

that is, 09.05.2010. On that day appellant nos.1 to 4, namely, Jitu, Amullaya, Sushil and Ukil assaulted Ranjit.

The victim started running towards the village road and was again assaulted by appellant no.9, Subol, Kangaru, Bapi, Bipul. As a result of the assault,

the victim suffered head injury and fell down on the village road. P.W. 2 tried to intervene and was himself injured. P.W. 2 was treated at Tapan

hospital. P.W. 2 has been cross-examined at length by the defence but his version remained unshaken. The genesis of the incident as narrated by

P.W. 2, the injured witness, therefore, is most credible and I have no reason to disbelieve the same. With regard to the credibility of the evidence of

P.Ws. 3 and 5, however I find force in the arguments on behalf of the appellants. Presence of P.Ws. 3 and 5 at the place of occurrence has not been

noted by P.W. 2, the injured witness. Evidence of P.W. 3 with regard to the roles of the appellants in the assault of the victim is at variance to his

earlier statement made to the investigating officer (PW 13) during investigation. Hence, version of P.W. 3 suffers from gross embellishments when

compared to his previous statement to investigating officer and does not inspire confidence. Therefore, I am not inclined to lend much credence to

him. Similarly, PW 5, son of PW 2, narrated the incident for the first time in court. He was not interrogated in the course of investigation and his

presence has also not been noted at the place of occurrence by his own father, that is, P.W. 2 himself. It is, therefore, unsafe to hold that PW 5 was

present at the place of occurrence and was an eye-witness to the incident.

On the other hand, I am of the opinion that the evidence of P.W. 2, the injured witness, is unblemished and may be wholly relied upon. Injury suffered

by him in the course of the incident is proved by PW 9. His version as to the manner and course of assault on the victim is also corroborated by the

medical evidence of P.Ws. 9 and 10 (who treated the victim) and the postmortem doctor (PW 11). All of them deposed about the injuries on the head

of the victim resulting in fracture and severe internal haemorrhages in the cranium of the victim resulting in his death. They also deposed that the said

injuries may be caused by hard substances like lathi and branches of trees. Mr. Bhattacharyya argued that the assault on the head of the victim was

perpetrated by assailants on the village road and not by those who assaulted him in the field. He referred to the evidence of PW 2 to sustain such

argument. I am unable to read the evidence of the said witness in that manner. The appellants along with other accused persons had gathered together

to assault the victim with the object to murder him. As per P.W. 2 the appellant nos. 1 to 4 assaulted the victim mercilessly in the field and, thereafter,

he was again assaulted by appellant no. 9, Subal and others on the village road.

As a result of such continuous assault, the victim suffered head injuries and died. I am unwilling to dissect the evidence of P.W. 2 in the manner as

suggested by learned counsel and come to the conclusion that the injuries on the head of the victim is due to assault on the village road and not due to

the assault in the field. The places of occurrence as noted by the investigating officer, PW 13 in his sketch maps (Exts. 9 and 9/A) appear to be

contiguous and the weapons of assault, namely, lathis and branches of trees were recovered from the P.O. As the places of occurrence, namely, the

field and the village road are almost contiguous to one other, the assault of the victim by the appellants and other accused persons at the said places

appear to be in pursuance to the common object shared by them in the instant case.

With regard to the motive of crime, it appears that PW 1 was married to appellant no. 1 Jitu but left him over marital discord and started living with the

victim, Ranjit, 6/7 months prior to the incident. During her marriage with appellant no.1, Jitu she had given a calf to Jamini (PW 6) but had taken it

back when she started residing with the victim. Salish was held over such issue

and Jitu threatened Ranjit. Subsequently, Jitu and others murdered him. Although the marriage of PW 1 with Jitu and her subsequent marriage with Ranjit 6/7 months prior to the incident is mentioned in the FIR, it is argued that the FIR is silent with regard to the dispute regarding taking back the calf from Jamini (PW 6), which is the motive of the crime. I am unable to accept such contention.

Firstly, second marriage of PW 1 with Ranjit is mentioned in the FIR and one cannot lose sight of the fact that FIR need not be an encyclopaedia of all facts. Secondly, I find from the examination of P.W. 13 (Investigating Officer) that PW 1 admitted such motive during her interrogation in the course of investigation. Hence, I am of the opinion that the motive of the crime is not an afterthought and has been proved beyond reasonable doubt.

It has been argued that the names of the appellants did not appear in the inquest report or the injury report Exbts. 3 and 6 respectively. It is trite law that the purpose of holding inquest is to find out the cause of death, that is, homicidal, suicidal or accidental and the injuries on the victim. Such

exercise is, however, not for the purpose of identifying the person who committed the crime. Moreover, no question was put to P.W. 8, who held inquest, whether he had interviewed the witnesses as to the persons who committed the crime. Similarly, no question has been put to the doctor,

P.W.9 who recorded the injury report as to whether he had queried about the names of the assailants of the injured persons. In the absence of such

cross-examination, I am loathe to disbelieve the otherwise credible version of an injured eye witness (PW 2) and hold that the prosecution case is

wholly unreliable. Coming to the evidence of PW 2, I find that the injured witness has spoken about the roles of appellants 1 to 4 and 9 and others in

the assault of the victim.

He is silent as to the presence of appellant nos.5 to 8 at the place of occurrence. No doubt, PWs 3 and 5 have spoken of the presence and

participation of appellant nos.5 to 8 in the incident. For reasons stated hereinbefore, I am doubtful whether the said witnesses were present at the

place of occurrence and am unwilling to rely on their versions which suffer from gross embellishments to come to a finding of guilt against appellant

nos.5 to 8. While I have no hesitation to hold that the appellant nos. 1 to 4 and 9 along with others (who are not before this Court as appellants) had

shared the common object to cause the murder of the victim and had mercilessly assaulted him on his head and other parts of the body resulting in his

death, I am inclined to extend the benefit of doubt to the other appellants, namely appellant nos.5 to 8 herein.

In the light of the aforesaid discussion, the conviction and sentence of appellant nos. 1 to 4 and 9 are upheld. However, the conviction and sentence of

appellant nos. 5 to 8 are set aside. Bail bonds of appellant no.9 is cancelled and he is directed to forthwith surrender before the trial court and serve

out the sentence failing which the trial court shall take appropriate steps for execution of the sentence in accordance with law. Period of detention

suffered by the appellant nos. 1 to 4 and 9 during investigation, enquiry and/or trial shall be set off against substantive sentence under Section 428 of

the Code of Criminal Procedure.

The appellant nos. 5 to 8 are acquitted of the charges levelled against them. They shall be discharged from their bail bonds after 6 months in terms of

Section 437A of the Code of Criminal Procedure. The appeal is partly allowed. Copy of this judgment along with the lower court records be sent

down to the trial court at once. Urgent photostat certified copy of this judgment, if applied for, be furnished to the parties expeditiously.