
(2022) 09 CAL CK 0060
In the Calcutta High Court
Case No : Criminal Appeal No. 132 Of 2004

Kanai Dolui & Ors.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 16-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 428

Indian Penal Code, 1860 — Section 114, 148, 149, 302, 304II, 323, 324, 326

Citation : (2022) 09 CAL CK 0060

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Prabir Kumar Mitra, Subhanwita Ghosh, N. P. Agarwal, Ashok Das

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

The appeal is against the judgment and order dated 21.02.2004 passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Midnapur, in Sessions Trial Case No. 55, November, 1998, convicting the appellant no. 1 Kanai to suffer simple Imprisonment for two years and to pay a fine of Rupees 3,000/- in default S.I. for three months for offence under Section 324 I.P.C. and for the offence under Section 114/304 part II, simple imprisonment for seven years and to pay a fine of Rupees 10,000/- in default S.I. for 1 year. The appellant no. 2 Krishna has been sentenced to simple imprisonment for seven years for the offence punishable under Section 114/304 part-II of the Indian Penal Code and a fine of Rupees 10,000/- in default to suffer S.I. for 1 year, 75% of fine amount would go to the family of deceased. All the appellants have been sentenced to two years simple imprisonment and a fine of Rupees 2,000/-each, in default to suffer S.I. for two months for the offence under Section 148 of the Indian Penal Code.

The appeal is on the grounds that judgment and order of conviction and sentence is bad in law and against the evidence on record and is liable to be set aside.

That the learned Trial Judge did not consider the defence case in its proper perspective and caused serious prejudice to the appellant which has resulted in gross miscarriage of justice. The judgment and order under appeal is based on the evidence on interested witnesses. That there has been a land dispute between parties and as such the chance of the appellant being falsely implicated is very high. That the accused persons also suffered injuries wherein the complainant and others entered the premises of the appellant/convicts. There is contradictions between the witnesses in their evidence before the Trial Court and that the entire trial before the Trial Court not being in accordance with law, the judgment and order of conviction and sentence under appeal is liable to be set aside.

Prosecution case

Prosecution case is that on 03.09.2006 at about 6.30/7.00 a.m., when the de facto complainant Swapan Dolui and his elder brother Ramkrishna Dolui were cutting bamboos from their bamboo grove on the north of their house, then firstly accused Krishnapada, Balaram, Kanai, Nemai and Achinta came there with axe, tangi, pekhra, katari etc. and resisted them. An altercation ensued. At that time, de facto's other brother Tapan, Debendranath Dolui, Debendra's wife Panchamai and sons Balai, Nemai and Sankar arrived at the spot. The accused persons began to strike them at random. At first, accused Kanai hit Panchami on her shoulder and left hand with 'pekhra', and she sustained severe injury. Then accused Panchubala and Arati came to the spot with 'katari' and participated in the altercation. Ramkrishna Dolui who was standing at some distance from the place was held from behind by accused Krishnapada and accused Kanai struck him on the left side of his neck violently by 'Pehkhra'. Ramkrishna got severe injury and suffered profuse bleeding from such injury and he died on the spot. Panchami was taken to Chandrakona hospital in a serious condition, while the other injured persons were Debendra, Balai, Tapan, Kanai and Sankar who were also sent to Chandrakona hospital. Upon the complaint lodged by the de facto complainant, Chandrakona P.S. case no. 71/96 dated 03.09.1996 was started, and thereafter on completion of investigation, charge-sheet has been filed against the above-mentioned accused persons.

On the basis of materials, all the accused persons have been charged for the offences punishable under Section 148, 149/302, 149/326, 149/324 and 149/323 I.P.C., to which they have pleaded not guilty and claimed to be tried.

Mr. Prabir Kumar Mitra learned lawyer for the appellant/convicts submits that from the evidence on record it is clearly seen that there was a civil dispute between the parties and there was a free fight at the time of incident in this case and the convict/appellants have been falsely implicated in this case and it is further submitted that the judgment and order of conviction and sentence not being in accordance with law is liable to be set aside.

Mr. N.P. Agarwal learned Additional Public Prosecutor submits that the

prosecution has proved their case against all the appellant/convicts beyond all reasonable doubt by way of oral and documentary evidence and there is absolutely no discrepancy in the said evidence before the Trial Court including the evidence of the eye witnesses and the Doctor and the documentary evidence which has totally corroborated the oral evidence in this case and the judgment and order of conviction and sentence being in accordance with law, the Appeal is liable to be dismissed.

Evidence on record

The prosecution in all examined twenty witnesses. The defence examined none but cross examined the prosecution witnesses.

Prosecution witness no. 1 Swapan Dolui. This witness has identified all the accused persons on dock and has stated that when his elder brother Ramkrishna Dolui and he were cutting bamboo from their bamboo grove at that time accused Krishnapada, Balaram, Kanai, Nemai and Achintya of village Dewra came to the spot being armed with katari, pekhra etc. and tried to restrain them from cutting bamboo. Over this an altercation took place between them and the accused persons. Then other accused persons came to the spot along with others and tried to restrain the accused persons but accused Kanai assaulted Panchami with pekhra on her right shoulder causing grievous cut injury. Then accused Panchubala and Arati assaulted the complainant and others with katari and accused Kanai, son of Babal inflicted a blow with 'pekhra' at the left hand of witness Balai and Tapan. The accused Krishna caught Ramkrishna from behind and accused Kanai inflicted a heavy blow on the left side of the neck of Ramkrishna with pekhra causing serious bleeding injury. Ramkrishna died on the spot. Injured Panchami, Balai and Tapan were taken at Chandrokona B.P.H.C. On hearing human cry when villagers rush to the spot the accused persons fled away. The written complaint was filed by the witness (Exhibit 1). This witness is also the witness to the inquest (Exhibit 2). It has been stated by the witness that the disputed land on which the bamboo grove is situated was given to them by way of Patta from the Government. The documents relating to the said land was seized by the police along with blood stained earth and control earth of the place of occurrence (MAT Exhibit 1). On being cross examined this witness has corroborated his evidence as stated in his chief and has again admitted in his cross examination that there was an altercation going on between the parties and no villagers came there at that time. At the time of the altercation when the victims raised alarm Bijay, Sadhan, Kshudiram, Sarbeswar and some others came to the spot. This witness could not say whether Habol, father of the male accused persons got patta in respect of the remaining six decimals in the plot and has admitted that they have dispute with the accused persons over the bamboo grove. Balai, Tapan and Panchami also sustained bleeding injuries during the incident and this witness has stated that accused Arati was armed with a lathi. Accused persons did not sustain any injuries during the incident. It has been further stated that Bulu, wife of Ramkrishna was present at that time but

she did not resist accused persons from assaulting Ramkrishna.

Prosecution witness no. 2 Bulurani Dolui is the wife of deceased Ramkrishna and the sister in law of the complainant. On oath she has stated that an altercation took place between accused and Ramkrishna and his brother (PW 1). Accused Kanai assaulted Panchami on her right shoulder with a 'pekhra' and also on Balai's and Tapan's right hand. Accused Panchubala and Arati assaulted by katari and lathi. Debendra was also assaulted with Kanai. Accused krishna caught her husband Ramkrishna from behind and Kanai inflicted a blow with pekhra on neck of Ramkrishna. She has stated that though she tried to save her husband the accused persons did not listen. This statement is in contradiction to the statement of PW 1. On cross examination she has stated that she did not try to shield Ramkrishna from the accused persons. She only requested them.

Prosecution witness no. 3 Nema Dolui is a Co-villager. He has corroborated the evidence of PW 2. This witness's mother was allegedly assaulted by accused Kanai.

Prosecution witness no. 4 Mansoram Shee Prosecution witness no. 6 Rampada Dolui, Prosecution witness no. 9 Debendra Nath Dolui, Prosecution witness no. 10 Balai Dolui, Prosecution witness no. 11 Panchami Dolui, Prosecution witness no. 12 Sankar Dolui, Prosecution witness no. 14 Dinanath Shee, Prosecution witness no. 15 Kanai Dolui, Prosecution witness no. 16 Tapan Dolui are Co-villagers and are eye witnesses and have corroborated the case of the complainant.

Prosecution witness no. 5 Sataya Sankar Acharya is Assistant Land Acquisition Officer, Midnapore Collectorate, who was B.L. & L.R.O. at Chandrokona, II-Block on 16.08.1996. He has proved his report marked Exhibit 3 which was submitted to O.C. of Chandrokona P.S. regarding some land dispute. He has admitted in his cross examination that the report does not contain the description of any land nor the names of the parties and has proved Exhibit A which is the record of rights in respect of plot no. 232 Mouza Rajgvanje P.S. Chandrokona recorded in the name of Habal Dolui.

Prosecution witness no. 7 Dr. Anil Kumar Bhowmick and Prosecution witness no. 8 Dr. Kamal Krishna Maity and Prosecution witness no. 20 Dr. Tarapada Ghosh are all Medical Officers. PW 7 is the Doctor who held the post mortem over the dead body of Ramkrishna Dolui and has proved the post mortem report (Exhibit 4) in court. Evidence of this witness is of extreme importance in this case. The evidence of this witness to a certain extent is being reproduced herein.

"The injury as found by him was sufficient enough in the ordinary course of nature to death of a person.

This is called pekhra (The witness was shown one weapon out of material Exhibit MAT-1). The injury as noticed on the dead body cannot be caused by this pekhra, even if the impact of a struck of pekhra having length and the breadth of this type (as the witness was shown) the injury as noticed in the present case,

cannot be caused.”

On being cross examined this witness has stated “the injury on the neck of the dead body as noticed by him might be caused due to fall upon some slightly curve sharp cutting weapon or instrument. Pekhra is not a curved weapon”.

PW 8 and PW 20 had examined the injured persons at the Block Primary Health Centre and proved the injury reports.

Prosecution witness no. 13 Laxminarayan Ghosh is the scribe of the written complaint Exhibit 1.

Prosecution witness no. 17 Sripada Mal is a constable who identified the body.

Prosecution witness no. 18 Subal Chandra Das is the Police Officer who held inquest over the dead body (Exhibit 6) and sent the body for post mortem.

Prosecution witness no. 19 Narayan Chandra Bhatta is the Investigating Officer.

Analysis of evidence

From the evidence on record it has come before the Trial Court that there was a free fight and altercation between the parties. There was a land dispute (Exhibit 3) as seen from the evidence of PW 5 Assistant Land Acquisition Officer. It is seen that it is now a road and that the patta in respect of the land was to be cancelled. Admittedly there has been an altercation leading to the death of Ramkrishna due to the assault by Kanai with a pekhra. The dispute was relating to cutting of bamboos from a bamboo grove to which both parties claimed ownership. PW 2 is the wife of the deceased. PW 1 the defacto complainant is the brother of the deceased. PW 16 is another brother of the deceased.

Dr. Tarapada Ghosh (PW 20) who has examined Panchami Dolui, Tapan Dolui, Debendra Nath Dolui, Balai Dolui, Kanai Dolui and Sankar Dolui, has proved all the injury reports before the Court marked Exhibit 11 series. From the said evidence and the injury reports it is found that the opinion of the Doctor related to the injuries of Panchami is “fresh and grievous”. It has come before this Court that convict Kanai Dolui had first assaulted Panchami Dolui and had caused the said injuries. The injuries of Tapan Dolui are also fresh and grievous. The said injury was also caused by Kanai as seen from the evidence on record. The injury sustained by Debendranath Dolui is simple fresh and minor. Injury sustained by Balai Dolui is fresh and simple. Injury sustained by Kanai Dolui was fresh and minor and Sankar Dolui was also fresh and minor. PW 7 is Dr. Anil Kumar Bhowmick the Doctor who conducted the post mortem over the body of deceased Ramkrishna. The opinion of the Doctor as to the cause of death was due to hemorrhagic shock in case of sharp cutting injury and it is homicidal and anti mortem in nature. This specific evidence of this Doctor is as follows:-

“.....The injury as found by him was sufficient enough in the ordinary course of nature to death of a person.

This is called pekhra (The witness was shown one weapon out of material Exhibit MAT-1). The injury as noticed on the dead body cannot be caused by this pekhra, even if the impact of a struck of pekhra having length and the breadth of this type (as the witness was shown) the injury as noticed in the present case, cannot be caused.....”

“.....On being cross examined this witness has stated “the injury on the neck of the dead body as noticed by him might be caused due to fall upon some slightly curve sharp cutting weapon or instrument. Pekhra is not a curved weapon.....”

From the said evidence it is seen that the Doctor has categorically identified MAT Exhibit 1 (a pekhra). All the witnesses in this case have also stated that convict Kanai Dolui caused the assault with a pekhra. The pekhra has been seized and marked MAT Exhibit 1. This witness has categorically stated that the injuries as noted on the dead body (while conducting post mortem) cannot be caused by this pekhra (MAT Exhibit 1) and has stated that if assaulted with this pekhra (MAT Exhibit 1) such injury cannot be caused as noticed. On being cross examined the Doctor has stated that injury on the neck of the dead body might have been caused by slightly curved sharp cutting weapon and pekhra is not a curved weapon. This evidence on record is in contradiction to the oral evidence before the Court where all the witnesses have stated that convict Kanai assaulted with a pekhra and a pekhra has also been seized (MAT Exhibit 1) .

It has also come before the Court that the complainant's/deceased party were cutting the bamboos and the convict's party was resisting the same.

Though the witnesses in this case are mostly related to each other and some are public witnesses the evidence more or less is corroborative. Though Exhibit 3 shows that the complainant's party have got .06 decimals of land, Exhibit A shows that the remaining .06 decimals of land was given to the predecessor of the accused persons and a civil suit has been filed by the predecessor of the accused persons against the complainant's party and the same has been admitted by the complainant. The incident in this case occurred on 03.09.1996 (26 years back). From the injury report it is seen that no history of assault or by whom has been noted in the general injury report. It has been clearly proved before the Trial Court that convict Kanai assaulted deceased Ramkrishna with a pekhra (weapon doubtful) on his neck causing his death on the spot. Absolutely no contradiction is there in respect of the said evidence. And the opinion of the said Doctor (PW 7) was that the injuries found on the deceased were sufficient enough to cause death in ordinary course. As such the oral evidence along with the medical evidence has proved that accused Kanai hit the fatal blow causing the death of the Ramkrishna. Considering the evidence on record it is found that accused Kanai was rightly found guilty for offence punishable under Section 304 part-II IPC. As there was no direct intention to cause death and the act was done with the knowledge that it was likely to cause death. The Trial Court also rightly held that convict Kanai Dolui was guilty of committing offence under Section 324 IPC in respect of Panchami Dolui and others. Admittedly the presence of the

other convicts along with convict Kanai Dolui has also been clearly proved before the Trial Court and their presence of being armed with deadly weapons at the time of occurrence has also been proved and the Trial Court rightly held that all the convicts guilty of offence punishable under Section 148 of the IPC. Regarding the role played by convict Krishnapada in the incident in this case it has come before the Court that at the time of altercation it was Krishnapada who caught Ramkrishna from behind and convict Kanai Dolui gave the fatal blow. Though it has come before this Court by way of oral evidence and also that the said convict was detained in custody for a certain period and also considering the fact that this is a case where the incident occurred 26 years back, this Court is of the view that though the conviction in respect of all the five accused persons has been rightly arrived at by the Trial Court but a modification in the sentence given to the convicts can be considered by this Court.

The sentence given by the Trial Court is as follows:-

Sl No.

Name

Under Section

Punishment

1

Kanai Dolui

324 IPC

S.I. for 2 years and fine of Rs. 3000 i.d.

S.I. for 3 months.

114/304 by Part-II IPC

S.I. for 7 years and fine of Rs. 10,000 i.d.

S.I. for 1 year.

148 IPC

S.I. for 2 years and fine of Rs. 2000 i.d.

S.I. for 2 months.

2

Krishnapada Dolui

114/304 part-II

148 IPC

S.I. for 7 years and fine of Rs. 10,000, i.d.

S.I. for 1 year.

S.I. for 2 years and fine of Rs. 2000 i.d.

S.I. for 2 months.

3

Balai Dolui

148 IPC

S.I. for 2 years and fine of Rs. 2000 i.d.

S.I. for 2 months.

4

Nemai Dolui

148 IPC

S.I. for 2 years and fine of Rs. 2000 i.d.

S.I. for 2 months.

5

Achinta Dolui

148 IPC

S.I. for 2 years and fine of Rs. 2000 i.d.

S.I. for 2 months.

From the conviction and sentence it is seen that Section 114 IPC is not applicable in respect of convict Kanai Dolui.

Sentence is modified in appeal as follows:-

Sl No.

Name

Under Section

Punishment

1

Kanai Dolui

324 IPC

304 by Part-II IPC

148 IPC

S.I. for 2 years and fine of Rs. 3000 i.d.

S.I. for 3 months.

S.I. for 7 years and fine of Rs. 10,000 i.d.

S.I. for 1 year.

S.I. for 2 years and fine of Rs. 2000 i.d.

S.I. for 2 months.

2

Krishnapada Dolui

114/304 part-II

148 IPC

S.I. for 5 months and fine of Rs. 25,000, i.d.

S.I. for 1 year more.

Fine of Rs. 5,000 i.d.

S.I. for 1 month.

3

Balai Dolui

148 IPC

Fine of Rs. 5,000 i.d.

S.I. for 1 month.

4

Nemai Dolui

148 IPC

Fine of Rs. 5,000 i.d. S.I. for 1 month.

5

Achinta Dolui

148 IPC

Fine of Rs. 5,000 i.d. S.I. for 1 month.

Fine if realized, 80% is to be paid to the family of deceased Ramkrishna (victim).

Period of detention, if any, undergone by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed in

terms of Section 428 Cr.P.C.

All sentences to run concurrently.

Bail bond of the appellants are cancelled. The appellants are directed to surrender forthwith and serve out the remainder of their sentence (if any) within one month from date.

In the event they fail to do so, trial court shall take appropriate steps to apprehend them and execute the sentence in accordance with law.

The appeal is, allowed to the aforesaid extent. Conviction is upheld but sentence is modified to the extent stated above.

Let a copy of this judgment along with the lower court records be sent down to the trial court immediately.

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