
(1989) 12 CAL CK 0012
In the Calcutta High Court
Case No : Criminal Appeal No. 152 of 1983

Madan Sardar and Others	Vs	APPELLANT
The State of W.B. and Others		RESPONDENT

Date of Decision : 15-12-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 162
Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 307, 34

Citation : (1990) 1 CALLT 361

Hon'ble Judges : J.N. Hore, J;Ajit Kumar Sengupta, J

Bench : Division Bench

Advocate : Balai Roy, for the Appellant;R.N. Das and R.R. Biswas, for the Respondent

Final Decision : Allowed

Judgement

Ajit Kumar Sengupta, J.—This appeal is directed against the judgment and order dated 22nd April, 1983 passed by the learned Additional Sessions Judge, 13th Court, Alipore convicting the appellants u/s 307/34 of the Indian Penal Code and sentencing each of them to suffer rigorous imprisonment for seven years and to pay Rs. 1,000/-, in default to suffer rigorous imprisonment for one year more.

2. Shortly stated, the prosecution case runs as follows :

The informant Basudev Dey @ Basu resides with his parents at 9/IDr Sahanagore Road within Police Station Tollygunge. Accused Madan Dey is known to him from before. There is a hair cutting saloon under the name and style "Lucky Saloon" on Sahanagore Road. On 11-2-80 at about 9-30 A.M. the informant entered into the said saloon. While he was combing his hair inside the saloon, accused Madan called him by his name from a distance. He did not reply. Then Madan suddenly stormed into the saloon and caught hold of the collar of his shirt and dragged him into the street and asked him to accompany him. Basudev refused to oblige him. This angered Madan and he brought out a knife about 1 ft. long from his

waist and stabbed him on the chest. Basu tried to flee away and began to run for safety. Then he found two persons standing at a distance of 15 ft. blocking his way. Accused Raghu armed with a dagger was one of them. The other was not known to him. Raghu stabbed him on his rib bone and also on his chest with the dagger of his hand. He fell down on the road and got up and rushed towards the office of Lakshmi Babu's Union with the bleeding injuries on his person where he met some of his comrades. They took him to Ramkrishna Mission Seva Pratisthan, Lansdowne Road, Calcutta, in a Jeep for treatment of his injuries. Meanwhile police authorities of Tollygunge Police Station received certain information about the incident from one Sadhan Bose and S.I. A. N. Chowdhury along with force proceeded towards the spot on foot. S.I. A. N. Chowdhury did not find the injured there and he came to know that the injured had been removed to Ramkrishna Mission Seva Pratisthan. Then he went to Ramkrishna Mission Seva Pratisthan and met the injured in Ward No. B2 of the said hospital. The injured narrated the incident to S.I. A. N. Chowdhury, who recorded his statement. The statement was read over and explained to him and he put his signature on it. The said police officer returned to Tollygunge Police Station and started Tollygunge P.S. Case No. 50 dated 11-2-80 against accused Madan and Raghu and another unknown man u/s 307/34 of the Indian Penal Code.

3. P.W. 1 is the only witness to the occurrence. He supports the prosecution case. He implicates the appellants who stabbed him with knives.

4. At the hearing Mr. Roy has contended that the facts and circumstances of this case would amply demonstrate that the charges have not been established, proved beyond reasonable doubt. He has referred to several circumstances which, according to him, would raise reasonable doubt as to the involvement of the appellants in the alleged incident. He submits that the circumstances would make the case of the prosecution highly improbable.

5. It is necessary to set out certain facts to appreciate the contention of the learned Counsel. Firstly, before the F.I.R. was lodged on the basis of the statement of the victim of Basudevi Dey, a G.D. Entry had been made on the basis of the complaint of one Sadhan Bose where the name of the first appellant does not figure at all. Secondly, the statement stated to have been made by Basudeb Dey, the victim, in the hospital which was treated as F.I.R. was not forwarded along with formal First Information Report. The First Information Report was forwarded to the learned Magistrate on 11th February, 1980 whereas the statement dated 11th February, 1980 of the victim was received by the learned Sub-Divisional Judicial Magistrate on 12th August, 1980. There is, therefore, reason to believe that the statement was recorded at a much later date when there was scope for distortions and embellishments. This suspicion is strengthened by the fact that after undergoing emergent operation P.W. 1 was not in a fit mental and physical condition to give a detailed narration of the occurrence and the evidence of P.W. 1 that he was also examined by the I.O. after his release from the hospital. Thirdly, the evidence of the material witness,

i.e. the victim (P.W. 1) raises a reasonable doubt in the mind of the Court as regards the involvement of the appellants.

6. The G.D. Entry No. 368 was made at 9-40 hours on 11th February, 1980. It has been recorded in the said G.D. Entry as follows :-

"One Sadhan Bose son of It. J. N. Bose of 22D, N.B. First Lane, Calcutta , has come to this P.S. and reported that this morning at about 09.35 hours one Basu of Sahanagore Road member of NLCC was passing alone Sahanagore Road and Sree Mitra Lane when suddenly Raghu, Parya & Timir all of Tollygunge assaulted him with the knife and inflicting injury on his person and he was removed to hospital with the help of NLCC members at R.K.M. Hospital. Accordingly, S.I. A. N. Chowdhury left for the spot to ascertain the fact along with Sergeant (not legible)."

7. It may be mentioned that the Court examined the Inspector of Police, Pranab Kumar Burman who produced the G.D. Entry No. 368. The Court also examined Sub-Inspector N. Chakraborty, who was attached to Tollygunge Police Station as a S.I. at the material time. He said that he made G.D. Entry No. 368 dated 11-2-80 at 09-40 hours on the information of one Sadhan Bose. He tendered the said G.D. Entry. He also said that Duty Officer S.I. A. N. Chowdhury left police station with force for the place of occurrence to verify and ascertain the facts. He also said that informant Sadhan Bose who came to police station and lodged G.D. was a leader of NLCC.

8. It appears to us that on the basis of the G.D. Entry of Sadhan Bose police started making investigation and also examined certain persons and the statement which was made by Basu, the victim, allegedly, in, the hospital was made in course of the investigation before the investigating officer. Accordingly, the statement made by Basu before the police is hit by the provisions of Section 162 of the Criminal Procedure Code and cannot be treated as the First Information Report within the meaning of Section 154 of the Criminal Procedure Code. As indicated earlier, in the G.D. Entry the name of the first appellant was not mentioned. There is no eye witness to the incident except the victim. The G.D. Entry was made immediately after the alleged incident. This omission appears to us is of vital importance. Sadhan Bose, the informant was also a member of the NLCC and it is hard to believe that if Madan the first appellant was involved in the assault of Basu, also a member of the NLCC he would not have named Madan before the police while lodging diary.

9. Secondly, in his evidence Basu said that Madan was his friend but he did not know where Madan resided. This appears to be..rather strange and not in keeping with normal human conduct.

10. P.W. 2 was the Driver of the Jeep of Lakhmikanta Bose stated to be NLCC leader. P.W. 2 in his Jeep brought Basu to Ramkrishna Mission Hospital. Basu sat on the front seat of the Jeep along with P.W. 2 but Basu did not say as to who had assaulted him. It was the earliest opportunity for Basu to disclose the name

of his assailants to the Driver of the Jeep and Barin (P.W. 3) who accompanied him to the hospital but he did not do so.

11 bleeding injuries who was running pressing his chest with his hands."

12. P.W. 3 Barin Saha who accompanied Basu to the hospital in the said Jeep also did not mention the name of any of the two assailants.

13. P.W. 4 has a shop adjacent to the place of occurrence. He also did not name any of the assailants. He only said that he had found Basu running with his hands on his chest.

14. P.W. 5 was the assistant at the material time in an adjacent sweet shop. He did not see anything of the incident. He only found people running to and fro.

15. Even before the Medical Officer, P.W. 6, in the emergency room the names of the assailants were not mentioned by Basu. Although in his deposition Dr. P. K. Jha stated that he was conscious and put questions to the patient as to how he had sustained injury and nothing more.

16. It is also necessary to consider the evidence of Investigating Officer, P.W. 13. He said that he examined Basudev Dey in his bed in Ward No. B-2 Extra of the hospital and recorded his statement. He stated in his cross examination "at the time of my visit I found a bandage on his chest and his body was covered by a Chadar". This could only be possible after the operation was made and the patient was brought to the Ward. This fact coupled with the fact that statement of Basu was forwarded to the Magistrate after six months and Basu also made a statement to the Police after his discharge would make the case of the defence probable that the said statement was obtained after discharge of Basu from hospital but not on the date when Basu was admitted. He was required to undergo an emergency operation and accordingly if any question would have been put in him this could have been before the Emergency doctor (P.W. 6). As pointed out earlier, there are reasons to suspect that the statement of P.W. 1 was recorded much later.

17. In view of the facts and circumstances pointed out before, the evidence of P.W. 1 implicating the two appellants against whom there is admitted enmity, does not appear to us reliable in the absence of corroboration from an independent source. We are, therefore, of the opinion that the prosecution has failed to prove the charge beyond reasonable doubt. 18. For the reasons aforesaid, this appeal is allowed. The order of conviction and sentence of the appellants is set aside. The appellants are discharged from their respective bail bonds.

J. N. Hore, J.

18. I agree.