
(2015) 05 CAL CK 0082
In the Calcutta High Court
Case No : C.R.A. No. 26 of 2005

Manbhula Mahato and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 174(1), 313, 313(1), 428
Evidence Act, 1872 — Section 145
Penal Code, 1860 (IPC) — Section 148, 149, 302

Citation : (2015) 3 CHN 704

Hon'ble Judges : Ashim Kumar Roy, J; Ishan Chandra Das, J

Bench : Division Bench

Advocate : Sekhar Kumar Basu, Senior Advocate and Koushik Gupta, for the Appellant; Manjit Sing, Ld. PP and Pawan Kumar Gupta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ishan Chandra Das, J—This Criminal Appeal (CRA 26/2005) arose out of the judgment and order of conviction dated 29th day of November, 2004 and 30th day November, 2004 respectively, recorded by Ld. Additional Sessions Judge, 2nd Court, Purulia in SC No. 67/2004 (ST No. 11/2004) wherein Ld. Sessions Judge found these appellants guilty for committing the offence punishable under Sections 302/149 I.P.C. and sentenced them to suffer Rigorous Imprisonment for life and to pay fine of Rs. 10,000/- (ten thousand) each and in default to suffer further Rigorous Imprisonment for 6 months and the period of detention during investigation and trial was subject to set off in terms of Section 428 Cr.P.C. Here no cross appeal has been filed on behalf of the state questioning propriety of the judgment, order of conviction and of sentence etc.

2. Being aggrieved by the said judgment and order of conviction, this appeal has been preferred.

3. The facts of the case, as revealed from the written complaint dated 27th day

of November 2002 (Ext. 1) was that on the 26th day of November, 2002 at about 4/4-30 P.M., while the family members of the victim Jagadish Tewary (hereinafter referred to as the "victim") consisting of his old mother, his wife, three sons and one daughter-in-law were inside his residential house at Bansgarh, a village under Jhalda Police Station (Purulia District), which situates in a close proximity of Jharkhand state, about 250/260 MCC activists being equipped with fire arms and deadly weapons came and encircled the residential house of the victim all on a sudden, tied rest of their family members, hit them with blunt side of the rifles, forcibly pulled the victim in front of the katra of the Durga Mondir - situating within the compound of the victim and beheaded him with a tangi placing his neck inside a piece of wood, popularly called as "Harikath" (i.e. the piece of wood meant for sacrificing animal like goat in front of the goddess Durga during festive season), causing his instant death and shouted slogans "M.C.C. Zindabad". They caused damage to the doors and windows of their dwelling house, set those ablaze after pouring petrol, caused damage to the property of the victim worth Rs. 1,50,000/-, looted gold ornaments of the female members of his family, cash of Rs. 25,000/- and other valuable belongings, including two guns and left the place shouting slogans.

4. On the basis of the said written complaint dated 27th day of November 2002 (Ext. 1), the Officer-in-Charge of Jhalda Police Station registered Jhalda Police Station Case No. 64 of 2002 dated 27th day of November 2002 and after investigation, the charge sheet was submitted against these appellants and others for facing trial and on conclusion of trial, these appellants were found guilty of the offence punishable under Sections 148/302 I.P.C., convicted and sentenced them to suffer imprisonment for life and to pay fine, as noted earlier.

5. A close scrutiny of the oral testimony of the witnesses examined on behalf of the prosecution reveals that the de facto complainant Aniruddha Tewari (PW-1) lodged the written complaint stating that he lost his father on the 26th day of November, 2002 as he was brutally killed by these appellants and others, some of whose names were found in the said written complaint (Ext. 1). Said de facto complainant claiming himself to be one of the ocular witnesses of the unfortunate and heart breaking incident vividly narrated the same which took place in his courtyard, in front of their family Goddess Durga, before a Harikath, (i.e. the piece of wood for sacrifice) and his father was pulled there for killing and his head was separated from the rest part of his body. He (PW - 1) also stated in detail in his oral testimony how the incident of ransacking and looting took place at his place of residence on the fateful afternoon (i.e. on the 26th day of November, 2002 at about 4-00/4-30 P.M.).

6. Learned Counsel for the appellants at the very outset of his argument submitted with reference to the statement given in the written complaint (Exhibit-1) and pointed out that the said written complaint disclosed the incident of setting fire in the house causing loss of household articles worth Rs. 1,50,000/-, gold ornaments of the inmates of the victim's family but no charge

of setting fire or for ransacking or dacoity was framed during trial. He emphatically submitted that there were exaggerated version and embellishment in the written complaint. Drawing our attention to the inquest report (Exhibits 4 & 5) he urged that the witnesses to such inquest report did not mention the names of any of the appellants, save and except the members of the M.C.C. Accordingly relying on a decision of a Division Bench of this Court Mobarak Sk. @ Mobarak Hossein & Ors. Vs. State of West Bengal, reported in (2011) 1 C. Cr. L. R. (Cal) 687, he was critical in submitting that since there was exaggerated version in the written complaint regarding dacoity or mischief etc., other versions by way of embellishment in it could not be ruled out, particularly when there was no reference about the assault. Drawing our further attention to the oral testimony of Aniruddha Tewari (PW-1) coupled with the testimony of Sukdeb Mura (PW-7), he pointed out that the injured members of the victim's family had been to the village Kusumtikri in the evening and the PW - 7 and others brought them to Kotsila hospital but the FIR was lodged under a suspicious circumstances since there was no explanation, given on the part of the prosecution how the FIR was lodged before the concerned P.S. in the next morning (i.e. in the morning of 27.11.2002 at about 8.05 A.M. as the said witness (PW-1) was an indoor patient of Kotsila Hospital).

7. Learned Counsel for the appellants pointed out that as per statement of the witnesses particularly the PW-1 that adjoining villagers rescued the injured victims and referred them to the Hospital but none of them stated the names of the miscreants - he added. With reference to the oral testimony of Aniruddha Tewari (PW-1) he also urged that the written complaint was lodged before Jhalda Police Station by the de facto complainant after putting signature on it without knowing the contents of the written complaint. Pointing out the manner of submitting such written complaint, the time of taking the body of the victim by PW - 18 for producing the same at Purulia Sadar Hospital Morgue for Post Mortem Examination, he also challenged the veracity of the statements of the ocular witnesses, particularly the family members of the victim and questioned how they witnessed one of the miscreants dancing with the severed head of Jagadish Tewari (the victim) when they lost sense. Since the ocular witnesses of the incident (PWS-1, 2, 3, 4, 8 & 9) urged that though the witnesses claimed to be the ocular witnesses, falsely incriminated these appellants since there was previous enmity in between the victim and the appellant Narayan Mahato. He pointed out to the statement in Cross-examination of PW-1 and urged that there was a long term dispute between the victim and appellant Narayan Mahato and for that reason a case was going on in between them and that was pending at Tenughat Court, lasting for 4/5 years at the time of incident. To further his argument he submitted with a confident tune that the appellants have been implicated in this case out of previous enmity and all the ocular witnesses, being the interested witnesses, gave false statements in the written complaint before the Investing Officer of this case and before learned Trial Court, with a clear motive to take revenge. With reference to the testimony of other local witnesses

were concerned, he pointed out that none of the other local witnesses could throw any light over the case of prosecution since they came to the scene of occurrence later on, and since none of them were declared hostile to the case of the prosecution, their evidence would be binding upon it (the case of the prosecution). In this context, he placed reliance upon a decision of the Hon''ble Supreme Court in *Rajaram vs. State of Rajasthan*, reported in 2005 SCC (cri 1805) and opined that the appellants deserve order of acquittal.

8. It was also pointed out by learned Counsel for the appellants, that the so called incriminating statements against their clients, available in the oral testimony of the witnesses, were not clearly explained to them during their examination in terms of Section 313 Cr.P.C. In this context, he criticized the manner of appreciation of evidence by learned Trial Court in this regard and placing reliance on a decision of the Hon''ble Apex Court in *Prakash vs. State of Karnataka*, reported in 2014 (3) Supreme 460 (at page 474) he vehemently urged, reiterating the decision laid down in *Tara Singh Vs. The State*, AIR 1951 SC 441 : (1952) CriLJ 1491 : (1951) 2 SCR 729 , that "the accused must be given a chance to offer an explanation, if the evidence is to be used against him and the conviction is intended to be based upon it". To fortify his argument in this regard he also relied on a Catena of decisions of the Hon''ble Supreme Court over the issue and submitted confidently that, as the incriminating circumstances were not properly explained before the learned Trial Court, this Court, taking notice of the fact, may examine the accused persons by offering reasonable explanations from them or by sending it for retrial before the Court concerned. Raising question about admissibility of the inquest report, he placed reliance on another decision of the Hon''ble Apex Court in *Pandurang, Tukia and Bhillia Vs. The State of Hyderabad*, AIR 1955 SC 216 : (1955) CriLJ 572 : (1955) 1 SCR 1083 , and urged before us that the Inquest Report was prepared under a suspicious circumstances and opined that such report is admissible only under Section 145 of the Evidence Act for the purpose of contradicting the maker of the statement, as to previous statements made by him in writing or reduced into writing and relevant to matters in question.

9. In this context, the law on the subject of inquest report can be dealt within the language of the Hon''ble Apex Court where the Hon''ble Supreme Court in *George and Others Vs. State of Kerala and Another*, AIR 1998 SC 1376 : (1998) CriLJ 2034 : (1998) 2 Crimes 27 : (1998) 2 JT 496 : (1998) LabIC 1390 : (1998) 1 LLJ 1063 : (1998) 2 SCALE 411 : (1998) 4 SCC 605 : (1998) 2 SCR 303 : (1998) 3 SLJ 183 : (1998) AIRSCW 1255 : (1998) 3 Supreme 192 dealt with critically and carefully:-

"The whole purpose of preparing an inquest report under Section 174(1) Criminal Procedure Code, is to Investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the deceased and stating in what manner, or by what weapon or instrument, if any, such wounds appear to have been inflicted. In other words, for the purpose of

holding the inquest it is neither necessary nor obligatory on the part of the Investigating Officer to investigate into or ascertain who were the persons responsible for the death. In dealing with Section 174 Criminal Procedure Code in *Pedda Narayana and Others Vs. State of Andhra Pradesh*, AIR 1975 SC 1252 : (1975) 4 SCC 153 : (1975) SCR 84 Supp , this Court held that the object of the proceedings thereunder is merely to ascertain whether a person dies under suspicious circumstances or met with an unnatural death and, if so, what was its apparent cause. According to this Court the question regarding the details how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of such proceedings??"

10. From a bare perusal of the impugned judgment as well as oral testimony of the witnesses, examined so far, it is evident that the brutal killing of victim Jagadish Tewari took place in the late afternoon (i.e. about 4-00/4-30) P.M. on the 26th day of November 2002 at village Bansgarh (P.S. Jhalda of district Purulia). The witness No. 1 Aniruddha Tewari is the eldest son of the victim Jagadish Tewari; PW-2 Chandrabati Devi, the mother of the victim, PW-3 Reshmi Tewari (wife of the victim); PW-4 Ramesh Tewari (one son); PW-8 Raja Tewari (another son); Prakriti Tewari (daughter-in-law of the victim as well as wife of the PW-1); PW-10 Janmenjoy Tewari (another son). Almost all the relations noted above claimed that they were eye-witnesses of this tragic incident which claimed the life of Jagadish Tewari by cutting his head from neck and separated it from his body placing him in a special piece of wood, known as "Harikath" meant for sacrificing animals before the Goddess, as noted earlier. From a careful scrutiny of the oral testimony of those ocular witnesses it is revealed that appellants Narayan, Rajaram and Ananda Majhi @ Anda were identified by Aniruddha Tewari (PW-1), the son of the victim. Chandrabati Devi, the mother of the victim (PW-2) identified the appellants Naran, Rajaram Prathama and Bhaktu; Reshmi Tewari, the wife of the victim (PW-3) claimed to have identified the appellants named Naran, Prathama, Rajaram, Sakti whereas Ramesh Tewari (PW-4) identified the appellants Naran, Rajaram, Prathama, Ananda Mahato @ Anda & Bhaktu whereas PW-8 (Raju Tewari) claimed that he could identify the appellants Naran, Rajaram, Ananda @ Anda; kali, Manbhula, Bhaktu & Prathama. The prosecution examined PWs- 5, 6, 7, 12, 13 & 14 who happened to be the neighbours of the victim and from their evidence, the factum of such brutal killing of Jagadish in a barbaric manner was overwhelmingly established. So far as the involvement of the present appellants are concerned, it was argued that the female witnesses namely PWs-2, 3 & 9, i.e. the old mother of the victim, his wife and daughter in law respectively, could not identify the assailants properly due to the reason that the village women (PWs-2, 3 & 9) may find certain difficulties in identifying the actual culprits, but in our considered opinion, it would not be reasonable to exclude their statements regarding involvement of these appellants. If we scrutinize the statements of the other ocular witnesses, who are the sons of the victim, it is obvious to note that the involvement of the appellants in committing the crime was not only crystalized in their exam-in-chief

but that was duly corroborated in their respective cross examinations. The female members of the victim's family i.e. the mother, wife and daughter-in-law (PWs. 2, 3, & 9) could identify some of the miscreants whereas the wife of the victim (PW-3) could identify appellant Sakti Mahato having specific role in the scene of occurrence. True it is that all these witnesses are the nearest relations of the victim but their evidence regarding identification of the miscreants cannot be doubted or disbelieved, rather normal human conduct suggests that the near relations are not interested in incriminating the innocent persons and by that process they do not choose to exclude the actual culprits. Learned Trial Court, in the impugned judgment categorically scanned the oral testimony of these ocular witnesses, the Autopsy Surgeon (PW-16), the Investigating Officer (PW-19) and came to the conclusion that these appellants committed the offence of murder of the victim in a barbaric manner.

11. It was brought to our notice that one Sibcharan Mahato was identified on dock. Though, there was no such under trial accused Sibcharan by name but such factum though remained unexplained, it did not outweigh the credibility of the witnesses particularly the ocular witnesses who saw such incident of killing of the head of their family in the hands of these miscreants, some of whom were identified in the day light, since the incident took place before the dusk (i.e. about 4-00/4-30 P.M.) on the fateful date. It was pointed out that there were certain minor discrepancies regarding involvement of these appellants in the statement of the witnesses but in such type of situation in the scene of crime, we cannot expect everything in proper order and "Parrot like" statements from all the witness.

12. Learned Counsel for the appellant in course of their respective arguments drew our attention to the questions put to the appellants while they were examined in terms of Section 313 Cr.P.C. as pointed out earlier and submitted that the appellants have been prejudiced since the incriminating circumstances were not properly explained to them for offering cogent explanation and thereby caused injustice to them. Learned Public Prosecutor in course of his argument relying on a decision of the Hon'ble Apex Court in Nar Singh Vs. State of Haryana, (2014) 4 CCR 487 : (2014) 4 Crimes 252 : (2015) 1 JCC 634 : (2014) 4 RCR(Criminal) 929 : (2014) 10 SCJ 492 , urged that the defence must show the prejudice to the accused and it has to be shown that in relation to the safeguard given to him under Section 313 Cr.P.C. A plain reading of the provision of Section 313 is as follows:-

Section 313

"(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the court -

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary.

(b) shall after the witnesses for the prosecution have been examined and before

he is called on for his defence, question him generally on the case."

The above provisions clearly mandate the object of Section 313(1) Cr.P.C. which provides that examination under Section 313 Cr.P.C. is to bring the sentence of accusation to the accused to enable him to explain each and every circumstances appearing in the evidence against him. The provision of this Section cast a duty on the court to afford an opportunity to the accused to explain each and every circumstance in the incriminating evidence. Frankly speaking there is no hard fast rule concerning the manner in which the accused is to be examined in terms of Section 313 Cr.P.C. but the mandate of the code is to see that in terms of fundamental principle of fairness in trial, the accused must be given opportunity to explain the incriminating circumstances if any, if he chooses to do so. On a perusal of the sheets meant for examination of the appellants in terms of Section 313(1) Cr.P.C., it is revealed the situations leading to trial were explained to them though not elaborately, but there was no room of doubt that the explanation regarding the incriminating circumstances was called from them.

13. In this context, a decision of Hon"ble Apex Court in State of Punjab Vs. Sawaran Singh, AIR 2005 SC 3114 : (2005) 100 CLT 344 : (2005) CriLJ 3445 : (2005) 6 JT 456 : (2005) 6 SCC 101 : (2005) 2 SCR 786 Supp : (2005) 2 UJ 927 : (2005) AIRSCW 3597 : (2005) 5 Supreme 189 ; may be quoted as a guiding principle in the matter of examination of the accused persons in terms of Section 313 Cr.P.C.

"(1) Question of the accused is done to enable him to give an opportunity to explain any circumstances which have come out in the evidence against him.

(1) It is not necessary that the entire prosecution evidence need be put to him and answers elicited from the accused. If there were circumstances in the evidence which are adverse to the accused and his explanation would help the court evaluating the evidence properly, the court should bring the same to the notice of the accused to enable him to give any explanation or answers for such adverse circumstances in the evidence.

(2) Composite questions should not be asked to accused bundling so many facts together.

(3) Where an omission, to bring the attention of the accused to an inculpatory material has occurred, that does not ipso facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission.

(4) If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity."

14. In course of argument, learned Counsel for the appellants drew our attention to the forms of recording examination of accused persons in terms of Section 313 of the Code of Criminal Procedure and it was pointed out that the examination of the accused persons were not properly done by learned Trial

Court at the material time causing serious prejudice to all the appellants. We have gone through the statements of the appellants while they were examined under Section 313 of the code. Appellant Naran Mahato @ Narayan Mahato (at page 93 of the paper book) was examined on 28th day of July 2004 before the Learned Trial Court and he categorically admitted that he was well aware of the evidence adduced against him during trial. On interrogation by putting the questions "generally" about the incriminating circumstances, available in the oral testimony of the witnesses like Aniruddha Tewari (PW-1), Chandrabati Devi (PW-2), Reshmi Tewari (PW-3), Ramesh Tewari (PW-8), Prakriti Tewari (PW-9) and Janmenjoy Tewari (PW-10) and it was clearly explained to him, what role he played at the time of commission of offence to which he not only pleaded innocence, rather while declining to adduce evidence in his defence he stated that there was a case going on between himself and the victim over the issue of killing of a goat and the proving previous case was amicably settled later on. Similarly, the questions were put to the appellants Kalicharan Mahato @ Kalia Mahato (at page 87 of the Paper Book); Sakti Mahato (at page 89 of the Paper Book); Manbhula @ Manbhula Mahato (at page 91 of the Paper Book); Parameswar @ Pratham Mahato (at page 96 of the Paper Book); Rajaram Majhi (at page 98 of the Paper Book); Anda @ Ananda Singh (at page 100 of the Paper Book) and Bhaktu @ Arjun Singh (at page 102 of the Paper Book) to which all of them equally pleaded not guilty and at the same time all of them declined to adduce evidence.

15. The materials on record clearly revealed that the oral testimony of the prosecution witnesses were recorded in presence of the present appellants and other accused persons, acquitted after trial and no cogent explanation was given to establish that they could not understand the consequences of the incriminating circumstances, coming out against them from the oral testimony of the witnesses. If we consider the examination of the appellants as noted earlier, in the light of the decision of the Hon"ble Apex Court in the state of Punjab versus Saran Singh (supra), we find no reason to conclude that the appellants were prejudiced in any manner whatsoever, far to speak of serious prejudice, as claimed. True it is that the questions were not put to the appellants in a fragmented manner but in our considered opinion the incriminating circumstances available in the oral testimony of the material witnesses recorded in their presence in open court were also properly explained to them. In the background we find no force in the argument as advanced by learned Advocates for the appellants in this regard.

16. At the cost of repetition it is to be noted, that the unfortunate incident of killing of Jagadish Tewari by placing his neck in a piece of wood, locally known as "Harikath" (i.e. a piece of holy wood meant for sacrificing goat etc.), took place at about 4-00/4-30 P.M. in the month of November, 2002 that is immediately before the dusk, we cannot reasonably exclude the oral testimony of the female members since the brutal killing was committed before a mother, wife and daughter-in-law of the victim. At the same time we could not ignore the

statements of the sons of the victim due to the obvious reason that they categorically stated in the oral testimony that they identified the miscreants in the day light and all the ocular witnesses like Aniruddha Tewari (PW-1), Ramesh Tewari (PW-4), Raju Tewari (PW-8) and Janmenjoy Tewari (PW-10), identified Naran @ Narayan Mahato (appellant No. 8), Rajaram Majhi (appellant No. 7), Anda @ Ananda Singh (appellant No. 3) whereas PW-4 identified appellants Naran, Rajaram, Ananda @ Anda, Bhaktu and Prathama, PW-8 identified Manbhula, Bhaktu, Naran, Prathama, Kalicharan, Anda and Rajaram; PW-10 identified Naran, Rajaram, Prathama, Ananda @ Anda, Manbhula, Bhaktu and Kalicharan. From a careful scrutiny of the oral testimony of the witnesses, it is revealed that all the appellants except Sakti Mahato were identified by the male members of the victim's family whereas said Sakti Mahato was named by Reshmi Tewari, but not identified by the wife of the victim during trial, but not identified by her.

17. It is however contended by Id. Advocates for the appellants in course of respective arguments regarding identification of the perpetrators of the crime was challenged. It was argued that the miscreants were not identified properly by the witnesses at the scene of occurrence and the Inquest Report was prepared on the next morning without disclosing the names of any of the appellants except the members of the M.C.C. It was also argued that the adjoining villagers rescued the members of the family of the victim and removed them to the hospital but they never stated any name of the miscreants nor they stated how the other victims sustained injuries.

18. Learned Trial Court in the impugned judgment at inner page 14 to 15 (117, 118 of the paper book) while scanning the evidence of the eye-witnesses pointed out that 5, 6 miscreants who were in special uniform entered their house tightened with rope and assaulted them and pulling the victim to the open varanda for sacrificing him in the Harikath in presence of all the persons present there. When such a barbaric and brutal killing was taking place, the opportunity of witnessing such a heinous crime committed by the miscreants, the appellants herein, cannot be doubted. Learned Trial Court in the impugned judgment while scanning the oral testimony of the ocular witnesses categorically pointed out the manner of identification of all the miscreants/appellants before us and from a close scrutiny of the oral testimony of those witnesses, it is revealed that learned Trial Court drew the conclusion that the none but these appellants were the perpetrators of the crime which took place on the 26th day of November 2002 at the place of residence of victim Jagadish Tewari who lost his life over the incident. On careful consideration of the materials on record, we find no infirmity in the findings of learned Trial Court.

19. In this context, we also scanned the oral testimony of the witnesses and it is found that the names of the appellants were stated and identified by the male members of the family but appellant Sakti Mahato was named only by Reshmi Tewari (PW - 3) but she could not identify him during trial. It is pertinent to

mention here that no formal Test Identification Parade took place in course of investigation and taking into account the scanty evidence of the PW-3 regarding involvement of appellant Sakti Mahato, we reasonably exclude him from attributing his involvement in commission of the crime giving him a benefit of doubt and we firmly conclude that no interference in the findings of learned Trial Court with regard to the fate of the other appellants is required.

20. Accordingly the appeal being C.R.A. No. 26 of 2005 in respect of appellant Sakti Mahato is allowed but the same in respect of other appellants is hereby dismissed. The judgment and order of conviction passed by learned Additional Sessions Judge, 2nd Court, Purulia in SC 67/2004 (ST 11/2004) are hereby affirmed to the extent as indicated above.

21. The appellant Sakti Mahato shall be released at once, if he is not liable to be detained in connection with any other case.

22. Let the L.C.R. along with the copy of the Judgment be sent down at once.

23. Urgent Photostat certified copy of this judgment, if applied for, shall be supplied to the advocates for the parties upon compliance with all formalities.

Ashim Kumar Roy, J.

24. I agree.