
(2010) 10 CAL CK 0008
In the Calcutta High Court
Case No : C.R.R. No. 3149 of 2004

Rabindra Nath Singha

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 326, 34

Citation : (2010) 4 CALLT 581

Hon'ble Judges : Girish Chandra Gupta, J

Bench : Single Bench

Advocate : Sourav Chatterjee and Susmita Das, for the Appellant; Subir Banerjee, Jayanta Banerjee and Ruxmini Basu Roy, for the Respondent

Judgement

Girish Chandra Gupta, J.—This revision application is directed against an order of acquittal dated 16th September 2004 passed by the learned Additional Sessions Judge, Islampur, Uttar Dinajpur, in Sessions Case No. 27 of 2002 corresponding to Sessions Trial No. 42 of 2002 State of W.B. v. Jogen Singh and 13 Ors. by which the learned Trial Judge acquitted the accused persons of charges u/s 302 read with Sections 326 and 34 of the Indian Penal Code. The case of the prosecution appearing from the written complaint is as follows:

2. Rabindranath Singha the informant filed a written complaint on 19th April 2000 at around 20.30 hrs. alleging that their boro corp within the village Chapua was at regular intervals deliberately damaged through the cows of the accused Jogen Singh. Only 3/4 days prior to the incident one of the cows of the accused Jogen was put up in the pound. On 19th April 2000 at around quarter to six the informant and his younger brother noticed that one of the cows of the accused Jogen was damaging their crop in the field. The informant and his brother protested against the aforesaid act. As a result Bablu and Prodip, two sons of the accused Jogen, became furious and started assaulting them. The left hand of Sanjiv, brother of the informant, was stabbed by a sword. They started shouting. Hearing their hue and cry the father and the maternal uncle of the informant

reached the place whereupon Jogen and his associates started assaulting all of them by bamboo, lathi, sword etc. The informant, his brother Sanjiv, Gopal, Rakesh, son of the maternal uncle, were all injured and they escaped. The father and the maternal uncle of the informant died on the spot. The information was lodged within less than two hours of the incident.

3. The informant Rabindranath Singha is the P.W.1. Rakesh above named is PW 3 and Gopal is PW 5.

4. The learned Trial Judge was of the opinion that " So, none of the witnesses has come forward and stated that accused persons were directly involved in the alleged offence. So, in absence of any proof by any evidence against the accused persons, it cannot be said that the accused persons are responsible for causing the death of the victims. From the all reasonable shadow of doubt that the accused persons have committed the alleged offence. The P Ws have miserably failed to prove the existence of the P.O. by documentary evidence. So, a doubt hangs upon the prosecution case as to whether the accused persons have committed the alleged offence or not. The benefit of doubt will go in favour of the accused persons. So, considering the oral and documentary evidence on record and also the statements raised by the Id. Advocates of both sides, I hold that the prosecution has not been able to prove the prosecution case to the hilt and beyond all reasonable shadow of doubt."

5. I already have indicated the substance of the written complaint lodged by the P.W.1.

6. The incident reported consists of two parts. First part is between the informant and his brother Sanjiv on the one hand and Bablu and Pradip on the other. Whereas the second part of the incident is between the complainant party and the accused persons as a whole.

7. It would only be proper to notice the entire cross-examination of the PW 1 which is as follows:

I have not filed any description any paper to daroga. At the relevant point of time I was a student at Tarial High School under Chakulia P.S. At that time I was read in Class XII. I cannot say the date of my birth. The quarrel started at 5.45 hrs. We fled away to Soutal para after seeing the incident with Sandip. At the time of murpit, Motilal and my maternal uncle Kishorimohan were in home. My house situates to the north-west corner and less than 1/2 k.m. away from the P.O. 20/25 villagers live in Soutal para where we fled away. Bablu and Pradip, the sons of Jogen were present at the time of incident. The accused assaulted gave blow upon him by sword and also to my maternal uncle which I have seen. They also assaulted them several blows by bamboo stick. I cannot say the plot or dag number and boundary of the land where incident took place. Bhabara village situates at a distance of 3 K.M. away from the P.O. I did not go to Bhabara village on that day, also my maternal uncle and my father did not go to that village. Sanjiv is alive. The incident started at 5.45 P.M. and closed at 6.00 P.M. I

came to my house at 6.0 P.M. I came to P.S. at 8.30 P.M. I cannot say in which date I attended my school in the month of April 2000. I gave ejahar at the P.S. at 8.30 P.M. Daroga babu came at P.O. On the same night at 10.30 P.M. Bhabvara village situates to the north-east of our village. Also a river is flowing to the south of my village. Also a river is flowing to the south of my village. Not a fact that no such took place or that the accused are inflicted falsely. Today I have come to depose after thoroughly reading the FIR. Not a fact that I have stated falsely as per F.I.R. I was at that time so puzzled so I cannot write FIR. At that time, I was crying at the P.S. Not a fact that I am deposing falsely.

8. The entire evidence of the P.W.2 Dulali Singh, son of the deceased Motilal, is also quoted hereinbelow which is as follows:

Motilal Singh was my father and Kishorimohan Singh was my maternal uncle. They were beaten to death in the year 2000 at about 5.45 P.M. in the field. On that day, I was with my father. On the day of incident, Jogin, Babul, Mahendra, Tarun, Bhavesh, Satyanarayan assaulted my father and maternal uncle with sword, bamboo sticks etc. As a result, my father and maternal uncle died. I have seen the incident. All the accused persons are present and identified on dock today.

XXMN. Each person has armed with ballam, sword and lathi. All 14 persons struck with their ballam, sword to my father and maternal uncle. I do not know the patit land of Ramjanam Sharma of village Balichar. I did not go to that land on the day of incident. I know Ramjanam Sharma. I cannot say my age. My age may be 10 yrs. now. I gave statement to the police on 19.04.2000 at 5.45 P.M. Not a fact that I am deposing falsely as tutored.

9. The entire evidence of the P.W.3 Rakesh is as follows:

Motilal was my pesa and Kishori was my father. They were died on 19/04/2000. On Wednesday the accused persons namely, Babul, Tarun, Jogin, Pradip, Mahendra, Swapan, and some others assaulted my pesa and my father. All the 14 accused persons are present and identified on dock. I was present in the field on the day of incident.

XXMN: Baluchar village situates to the west of our village it is at a distance of 3 K.M. away. I have seen the patit land of Ramjanam Sharma of Baluchar. That land situates 3 K.M. away from our village. The distance of 20 bighas for taking cow, from the P.O. I am illiterate person. I state English date. On that day, Ram Janam Sharma was not present. I cannot say the dag, plot and kh. No. of the land where my father and pesa were assaulted. Later says, I did not go there on the day of incident. Not a fact that I am deposing falsely or that no incident took place in that manner.

10. The entire evidence of the PW 5 Nanigopal, another son of the deceased Motilal, is as follows:

I am a student at Raiganj Mohanbati High School at Raiganj. I am reading in

class XII. Motilal and Kishorimohan Singh died on 19.04.2000 by murder in our field. There was a dispute regarding grazing of cows in our field. We objected about this matter and I caught one cow belonged to Jogin Sand at that Jogin Singh threatened me to kill. On the date of occurrence I along with my brother Nabin, Sandip and Rakesh went to the field and then a quarrel took place in between Bablu and Sandip. Bablu started to beat my brother and on seeing this Jogin was proceeding at the P.O. with a gang and they assaulted us. In the meantime i.e. my father and maternal uncle were proceeding to the P.O. and they started to assault upon them and we fled away. Then Jogin along with his gang were returning their home and again we reached to P.O. and found my maternal uncle and father with bleeding injuries, Sandip was also lying in serious condition. I noticed the incident from 10/12 bigha from the P.O.

XXMN.: I cannot say the dag number and plot number of the land i.e. P.O. The land situates to the east of my village. Balichar village situates to the west of our village Chapua it is at a distance of about 11/2 to 2 K.M. away. On 19.04.2000 I read at Sakuntala High School in class VIII. Sakuntala High School situates at a distance of 4/5 k.m. away from our village. I did not attend school on that day. My date of birth is 05/04/87. I have stated to police on 19/04/2000 at 5.00 P.M. At that time, Police came to our village. Not a fact that I have not seen the incident and no incident took place or that they were murdered at Balichar or that I am deposing false.

11. No elaborate reasoning is required to demonstrate that the finding of the learned Trial Judge that none of the witnesses has come forward and stated that the accused persons were directly involved in the alleged offence is on the face of it contrary to the evidence on record and is therefore perverse.

12. The learned Trial Judge held that the prosecution witnesses miserably failed to prove the existence of the place of occurrence by documentary evidence. This finding is based on the fact that the PW 1 in his cross-examination failed to give the plot number, dag number and boundary of the land where the incident took place. The plot number and dag number of the place of occurrence is hardly relevant in a murder trial. The P.W.1 in his cross-examination deposed that "my house situates to the north-west corner and less than 1/2 km. Away from the P.O." There is no suggestion given to the PW1 during his cross-examination that no such incident happened at the alleged place of occurrence. Similarly no such suggestion was given to the PW 2 Dulali Singh. He was asked in his cross-examination about patit land of Ramjanam Sarma of which the witness did not know anything and he deposed that he did not go there. P.W.3 has deposed that he was present in the field on the day of the incident. It may be recalled that grazing of the cows of the accused Jogen Singh in the paddy field of the complainant party was resented whereupon the sons of the accused Jogen started assaulting the PW 1 and his brother Sanjiv. When they raised hue and cry their father and the maternal uncle rushed to the spot whereupon all the 14 accused assaulted them and both of them died on the spot. PW 3 deposed that

he was present in the field on the day of the incident. In his cross-examination he deposed that "I was on the east-south corner of our village. The difference of 20 bighas for taking cows from the P.O.". PW 5 in his cross-examination could not indicate dag number and plot number of the place of occurrence. He however deposed that the land is situated to the east of the village. There is no suggestion given to him that the place of occurrence is not the one deposed to by the witness. The investigating officer (PW 12) in his examination-in-chief deposed as follows:

During investigation I visited the P.O. i.e. Chapua; prepared two inquest reports of two different dead bodies and forwarded the said two dead bodies for P.M. to Raiganj Hospital.

13. The finding of the learned Trial Court is thus altogether against the weight of the evidence. The learned Trial Court may have been misled by the following submission appearing to have been made by the learned Public Prosecutor:

The Id. Lawyer of the prosecution has submitted that there are so many discrepancies in the evidences of P.Ws. Moreover, the P.W.1, P.W.2 and P.W.3 are not the eyewitnesses of the incident.

14. This submission appearing to have been made by the learned lawyer of the prosecution was most unbecoming of him to say the least. But that by no means is a justification to throw the case of the prosecution overboard without considering the material in a dispassionate manner.

15. Mr. Banerjee, learned Advocate, appearing for the accused opposite parties assailing the evidence of the PW 1 submitted that the PW 1 according to his own evidence was "far away" from the place of occurrence when the deceased were being assaulted. The expression used by the PW 1 that he was far away from the place of occurrence where his father and maternal uncle were being assaulted has to be examined in the context of the deposition in cross-examination wherein he stated that " the accused assaulted gave blow upon him by sword and also to my maternal uncle which I have seen". Mr. Banerjee did not also dispute the fact that as regards the first episode clearest possible evidence was given by the PW 1 involving accused Bablu and Pradip.

16. The second submission advanced by Mr. Banerjee was that PW 2 at the relevant point of time was only six years old. Therefore it may not have been possible for him to remember the incident. PW 2 appears to have understood the questions and given rational answers. Therefore this criticism of Mr. Banerjee is not acceptable.

17. With regard to the evidence of the PW 3 Mr. Banerjee contended that the PW 3 admitted in his cross-examination that he did not go to the P.O. PW 3 according to his evidence is an illiterate person. He was asked in his cross-examination as regards Ramjanam Sarma and thereafter as regards the plot number and dag number of the place of occurrence. Both the questions were

answered by him in the negative. Then he volunteered to say that he did not go to that place on the day of the incident. It is probable that he was referring to the land of Ramjanam Sarma and meant to say that he did not go there. In any event the matter cannot be decided on the basis of a stray sentence uttered by any of the witnesses.

18. The fourth submission made by Mr. Banerjee was that the PW 11 opined in his cross-examination that none of the injuries of the deceased was caused by any sharp cutting weapon. PW 11 obviously did not remember his evidence in examination-in-chief "Penetrating wound by 1/2" by 1/3" of the neck muscle."

19. The fifth submission made by Mr. Banerjee was that on the date of the incident some of the accused persons were juvenile. This question may be gone into during the retrial.

20. Lastly it was contended by Mr. Banerjee that the bodies of the deceased persons were recovered from the Balichalk village which according to the evidence of the PW 6 is 3 K.M. away from the place of occurrence.

21. PW 6 is a mere signatory to the inquest report. What is important is the evidence of the PW 12 the investigating officer who conducted the inquest. His evidence is as follows:

During investigation I visited the P.O. i.e. Chapua; prepared two inquest reports of two different dead bodies and forwarded the said two dead bodies for P.M. to Raigang Hospital.

22. All the submissions advanced by Mr. Banerjee are thus disposed of. I am of the considered opinion that gross miscarriage of justice was occasioned by the judgment made in a casual manner disregarding altogether the evidence on record. Therefore the impugned order of acquittal is set aside. The matter is remanded back to the learned Trial Court for retrial in accordance with law uninfluenced by any observation which may have been made herein. The accused shall be taken in custody and their release on bail shall be in the discretion of the learned Trial Court. Lower Court Records with a copy of this judgment be sent down forthwith.

23. Urgent xerox certified copy of this judgment, be delivered to the learned Counsels for the parties, if applied for, upon compliance of all formalities.