
(2013) 01 CAL CK 0024
In the Calcutta High Court
Case No : CRA No. 638 of 2009

Ramil Mondal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 320, 323, 324, 326

Citation : (2013) 2 CHN 275

Hon'ble Judges : Tapen Sen, J;Kanchan Chakraborty, J

Bench : Division Bench

Advocate : Deep Chaim Kabir, for the Appellant;Debasish Roy, Ld. P.P. and Kallol Mondal, for the Respondent

Final Decision : Partly Allowed

Judgement

Kanchan Chakraborty, J.—The Challenge in this appeal is to the judgment and order dated 2.9.2009 passed by the learned Additional District and Sessions Judge, Fast Track Court No. 6, Malda in Sessions Trial No. 19/2009 (Sessions case No. 26/2009) thereby convicting the appellant Ramil Mondal for committing offence punishable u/s 326 of IPC and sentencing him to suffer Imprisonment for life with a fine of Rs. 10,000/-. Maloti Mondal lodged one F.I.R. with Ratua Police Station on 28.11.2004 alleging therein that on 21.10.2004, the appellant along with others being armed with deadly weapons, such as, "lathi", "Hansua", "Ballam", "Farsha" came to her house and attacked Lachman Mondal as he could not attend to his work on their land. They assaulted Lachman with "hansua" and caused severe cut injury on his right arm. When the lodger of the F.I.R. i.e. Maloti Mondal and others rushed to the spot in order to save Lachman Mondal, the appellant and his associates also assaulted them and caused injuries. Injured Lachman Mondal was taken to Malda Sadar Hospital for treatment. His right hand was amputated because in course of medical treatment, gangrene developed. On the basis of said F.I.R., Ratua police station case No. 184/04 dated 28.11.2004 was started against the appellant and three others. The investigation ended in a

charge-sheet u/s 323, 324, 326, 307 /34 of the Indian Penal Code. The appellant and three other accused persons were arrayed to face the above charges to which they pleaded their innocence. Prosecution examined eleven (11) witnesses and produced some documents, such as, medical reports, F.I.R., Sketch map of the place of occurrence etc. which were admitted into evidence and marked exhibits on behalf of the prosecution. The learned Trial Court, upon consideration of the evidence, oral and documentary, came to a conclusion that the charges labeled against the other three accused persons were not proved against them. They were acquitted from the charges. The appellant Ramil Mondal was also found not guilty to the charge u/s 307 of IPC but, found guilty to the charge u/s 326 of the IPC. Learned Trial Court sentenced him to suffer imprisonment for life for committing the offence u/s 326 of IPC with a fine of Rs. 10,000/-.

2. Ramil Mondal, being aggrieved by and dissatisfied with the said order of conviction and sentence, has preferred this appeal on manifold grounds.

3. Mr. Deep Chaim Kabir, the learned Advocate, Amicus Curiae for the appellant contended that the learned Trial Court failed to appreciate the fact that the right hand of the injured Lachman Mondal was not cut off by the appellant but it was amputated in hospital because in course of treatment gangrene developed. Therefore, even it is accepted for the sake of argument that the appellant caused injury on the right arm of Lachman Mondal by a sharp cutting weapon like "Hansua", the offence would not come within the category of grievous hurt endangering life. At best, Mr. Kabir contended, the offence alleged may attract section 324 of IPC. He contended further that there was inordinate delay in lodging the F.I.R. and the explanation provided for such delay cannot be said to be sufficient and satisfactory at all. Mr. Kabir has drawn our attention to some flaws in the investigation and contended that prosecution case was doubtful. He put much stress on the fact that no local people who appeared on the scene helped the injured and his family in any manner and tried to resist the appellant and his associates from causing hurt to them. They also did not assist them subsequent thereto. According to Mr. Kabir, this was very unusual and unnatural.

4. Mr. Debasish Roy, learned Counsel appearing for the State of West Bengal, contended that when the victim himself stated specifically that he was hit by the appellant with a "hansua" on his right hand and, as a result, his right hand was amputated and he had to stay in hospital for about 60 days, the discrepancies pointed out by Mr. Kabir in the oral evidence of the witnesses are to be ignored. He contended that the fact that Lachman Mondal was hit by the appellant with a "hansua", has been supported by other witnesses. That fact was also supported by medical evidence. He contended further that the right hand of the injured Lachman was amputated because of the injury caused by the appellant Ramil Mondal. The injury so sustained by Lachman Mondal was fatal in nature and squarely comes within the clauses "fifthly" and "eighthly" of section 320 of IPC. He was confined in hospital, of course, with severe pain for more than 20 days. Therefore, Mr. Ray contended, the Judgment of conviction does not warrant any

interference in this appeal.

5. We have perused the oral evidence recorded by the learned Trial Court and the documents admitted into evidence in course of trial with rapt attention. There is no denial of the fact that Lachman Mondal was admitted in Malda Sadar Hospital on 21.10.2004 with multiple injuries on his right upper limb. The exhibits 1, 2 and 3, altogether make it abundantly clear that not only Lachman Mondal was admitted in the hospital on 21.10.2004 with multiple injuries, but he was also informed that there was chance of gangrene. The exhibits 1, 2 and 3 also disclosed that his right hand was amputated twice. He was discharged on 28.12.2004. In exhibit 2 it has been mentioned clearly that the injury sustained by Lachman Mondal was due to assault. Going by the evidence recorded by the learned Trial Court we also find that no second case other than the case made out by the prosecution is forthcoming. The defense, in course of trial, did not make out any specific or probable case of receiving that kind of injury by Lachman Mondal on 21.10.2004. Only a question in the form of a suggestion was put to the witness that the appellant and his associates were implicated falsely because they demanded money from Lachman Mondal which was paid in advance to him for working in their land. That suggestion was denied flatly and, as such, it has got no evidentiary value at all. In course of examination u/s 313 Cr.P.C., the appellant Ramil Mondal also stated that he was falsely implicated because he demanded Rs. 900/- which he paid to the injured Lachman. We do not like to accept that plea taken by the appellant in the Trial Court. No man would like to risk his life for Rs. 900/- by way of inflicting himself with severe injuries. We find that the learned Trial Court discussed the point elaborately. We share the view of learned Trial Court in this regard. On an overall analysis, the evidence recorded on behalf of the prosecution shows that there was no inimical relationship between the appellant party and the injured party. There was no reason, whatsoever, for the injured and his family member to implicate the appellant in a false case of the like nature.

6. In a case of assault, the best witness would be the injured himself. It is trite law that conviction can be recorded on the basis of the sole testimony of the injured if it is found consistent, reliable and trustworthy. The injured Lachman Mondal was examined as P.W. 5. He stated that on the fateful date and time, the appellant and his associates came near his house and hurled abusive languages towards him. He came out and protested. Ramil i.e. the appellant threatened him and brandished his "hansua" directing it towards his neck. P.W. 5 Lachman Mondal, stated that he raised his right hand and the blow of "hansua" landed on his hand. He sustained bleeding injury and was taken to hospital. His hand was amputated. We have gone through the cross-examination of the P.W. 5 and found that although many villagers appeared on the scene, none of them accompanied the injured to the hospital. We also find that his hand was tied with a napkin by Bifal. He did not narrate the incident to the Doctor.

7. Bifal was examined as P.W. 3. He stated that at the relevant point time, he

was standing in front of his house and heard a yelling. He found appellant Ramil and other two running away. He went towards the house of Lachman and found him lying on the road with bleeding injury on his hand. He stated further that he tied the injury with the napkin of Lachman. He also found the appellant Ramil was running away with a "hansua" in his hand while he was running away. We find from the cross-examination of P.W. 3 that he made no statement to the police. Mr. Kabir has drawn our attention to the fact that P.W. 3 was not examined by the investigating officer but cited as a witness. His maiden statement in the Trial Court, therefore, cannot be relied on. We do not find much substance in his contention. The name of P.W. 3 was stated by the injured himself as the person who tied up his wound immediately after the incident with a napkin. Non-examination of the P.W. 3 by the I.O. of the case, therefore, cannot be the only ground to discard that part of the evidence of P.W. 5 as well as P.W. 3.

8. Again, the statement of P.W. 5 was supported by P.W. 2 Maloti Mondal, who lodged the F.I.R. There was no inconsistency and lack of corroboration in the statement of P.W. 5 and P.W. 2 as regards causing of injury by the appellant on the right arm of the injured Lachman with a "hansua" P.W. 4 is brother of the injured. From his cross-examination we find that when he appeared in the scene, he found Lachman was lying on the ground with bleeding injury. This statement of P.W. 4 suggests that he had not seen the appellant to cause injury on the right hand of Lachman. P.W. 6, an independent witness, has also supported the prosecution case by stating categorically that she found appellant Ramil to assault Lachman with "hansua" and Lachman sustained injury on his right hand. P.W. 6 was extensively cross-examined by the defense. She denied the suggestion put to her by the defense that she did not witness the incident. We are of view that the statement of P.W. 6 can well be relied on. Beside P.W. 6, P.W. 7 is also an independent witness who supported the prosecution case. He stood against the test of cross-examination very confidently and flatly denied the suggestion put to him by the defense that he did not witness the incident of causing hurt on the right hand of Lachman by the appellant Ramil with "hansua".

9. The evidence of P.W. 8, Dr. Sandip Chakraborty is also very important in this case. He stated that on 21.10.2004 he attended to one Lachman Mondal who was admitted as an indoor patient at Malda District Hospital. He stated that the patient was having sharp cut injury on his right arm with profuse bleeding. He stated further that the artery of the hand of patient was cut into two pieces and as a result, gangrene developed and the hand was amputated twice. In his cross-examination the P.W. 8 reiterated that gangrene on the injured limb had developed and a revision amputation was done by him on 15.12.2004. He, however, stated that he was not told about the history of the assault. P.W. 8 was not cross-examined by defense on cutting of the artery into two pieces and causing of gangrene.

10. P.W. 10, Dr. Sumit Kumar Das was the Block Medical Officer of Ratua B.P.H.C.

On 21.10.2004, he examined injured Lachman and found a cut injury on his right bicep muscle with profuse bleeding. He referred the injured Lachman for treatment to the Malda Hospital. The evidence of P.W. 8 and 10 together supports the prosecution case that on 21.10.2004, Lachman Mondal was examined in Ratua B.P.H.C. initially and, was the referred to the Malda Sadar Hospital for treatment as he had cut injury on his bicep muscle with profuse bleeding. It is also established from the evidence together with exhibits 1, 2 and 3 that Lachman was admitted in the Malda Sadar Hospital with such an injury on that day and the history of injury was recorded as assault. It has also been established that the artery of his hand was cut into two pieces resulting in the stoppage of blood circulation and development of gangrene. His right hand was amputated twice and he was in the hospital for that purpose for about 60 days.

11. We have stated earlier that in a case of like nature, the injured person would be the best witness and if his evidence was found consistent, credible and trustworthy then conviction can well be recorded on the basis of his statement only. In the case at hand, the evidence of he injured (P.W. 5) is found credible, consistent and trustworthy. His evidence was supported by independent witnesses like P.W. 6 and P.W. 7. The defense failed to establish the plea of false implication taken by it in the Trial Court. The prosecution case was supported by P.W. 8 and P.W. 10, the Medical Officer who examined the injured. We have also noticed that the learned Trial Court appreciated the evidence meticulously and discarded some evidence which was not found acceptable. The evidence which was found reliable and credible to the learned Trial Court was sufficient enough to accept the prosecution version.

12. According to Mr. Kabir, the offence alleged does not attract section 326 of IPC because the right hand of the injured was not cut off by the appellant. It was amputated subsequently by the Doctors as gangrene developed in course of treatment.

13. Section 320 of IPC defines "grievous hurt". It is set out below:

The following kinds of hurt only are designated as "grievous":

First.- Emasculation.

Secondly.- Permanent privation of the sight of eight eye.

Thirdly.- Permanent privation of the hearing of either ear.

Fourthly.- Privation of any member or joint.

Fifthly.- Destruction or permanent impairing of the powers of any member or joint.

Sixthly.- Permanent disfiguration of the head or face.

Seventhly.- Fracture or dislocation of a bone or tooth.

Eighthly.- Any hurt which endangers life or which causes the sufferer to be during

the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

14. The clause "fifthly" says about permanent impairing of powers of any member or joint. The clause "eighthly" says about hurt of any nature which endangers life or which causes the sufferer to be during the space of 20 days in sever bodily pain or unable to follow his ordinary pursuits.

15. In the instant case, we find that the artery of the right hand of injured Lachman was cut into two pieces because of the hurt caused by the appellant with a sharp cutting weapon like "hansua". As a consequence, Lachman had to suffer for about 60 days obviously in severe bodily pain as he had undergone two amputations and he was unable to follow his ordinary pursuits. There was permanent impairing of the power of his right hand.

16. A hurt, in order to amount to grievous hurt, must come under any of the clauses of section 320 of IPC, else the hurt will be simple. The clause fifthly and eighthly deal with permanent impairing of part of a body and sufferance in pain more than 20 days because of fatal injuries. It is not the case before us that the injured was confined to hospital for more than 20 days on his own volition. To be precise, the injured Lachman not only suffered severe bodily pain for more than 20 days in hospital with inability to follow his ordinary pursuits, but he also lost his right hand permanently. Therefore, we find substance in the contention of Mr. Roy, learned Counsel appearing on behalf of the State of West Bengal that the offence committed by the appellant attracts section 326 of IPC. We accept his submission and are of the opinion that the learned Trial Court made no mistakes in coming to the conclusion that the appellant committed the offence punishable u/s 326 of IPC.

17. It is true that there were some flaws in the investigation, such as, not seizing the blood stained wearing apparels, napkin, non-seizure of offending weapon and failure to examine some of the witnesses. We have considered that aspect seriously and are of opinion that such flaws in investigation are not touching the root of the prosecution case or are not sufficient enough to shake the basic version of the prosecution case. Flaws in investigation by itself can not be a ground for exonerating a guilty man when his guilt is otherwise established by sufficient and satisfactory evidence.

18. There are some discrepancies in the evidence of witnesses which, in our estimate, are trivial in nature. The learned Trial Court rightly ignored those discrepancies.

19. The inordinate delay in lodging F.I.R. has been explained in the F.I.R. itself (Exhibit 3). We find that the learned Trial Court discussed this aspect meticulously and we are also of the view that the prosecution explained the delay in lodging F.I.R. by assigning sufficient and satisfactory reason.

20. In view of the discussions above, we find that the judgment impugned

convicting the appellant u/s 326 of IPC is not required to be interfered with in this appeal.

21. As regard the order of sentence, Mr. Kabir contended that the appellant has already suffered R.I. for a period of 3 years and some odd months. The appellant was ready to compensate the victim. So, a lenient view be taken. Mr. Roy, however, has left the matter to this Court. It is needless to say that losing of the right hand permanently makes a person unable to follow his ordinary pursuits. It is a great loss for a human specially for a day labourer having family to maintain. Imprisonment for life of the appellant might have pleased him as the guilty man got punishment for the crime but, of course, it had no impact on his livelihood. The victim who was somehow managing his family, now is not in a position even to do so. So, what he needs is financial help to cope with the situation. We were told that the appellant was a man having landed properties. In other words, he is a man who can afford financial help to the victim. In our considering opinion, justice would prevail if the appellant compensates the victim adequately instead of suffering further sentence behind the bars.

22. Accordingly, while upholding the judgment of conviction, we modify the order of sentence by reducing the sentence of imprisonment to the period already undergone by the appellant and to pay fine of Rs. 50,000/- within three(3) months from the date of communication of this order. In default, the appellant has to suffer R.I. for five years more. The fine amount, if paid, be given to the victim Lachman Mondal.

23. As a result, the appellant is allowed in part and disposed of. Urgent Photostat certified copy of the judgment, if applied for, be handed over to the parties on compliance of necessary formalities.

Tapen Sen, J.

I agree.