
(2007) 04 CAL CK 0046
In the Calcutta High Court
Case No : C.R.A. No. 272 of 2002

Sasthi Bagdi and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 19-04-2007

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 302, 324, 34

Citation : (2007) 2 CALLT 561 : (2007) CriLJ 2600

Hon'ble Judges : Kalidas Mukherjee, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : Sudip Kumar and Sayed Khan, for the Appellant; Ashok Kumar Mukherjee and Amajit De, for the Respondent

Judgement

Kalidas Mukherjee, J.—This appeal is directed against the judgment of conviction and sentence passed by learned Additional Sessions Judge. 2nd Court, Bankura convicting Sasthi Bagdi and Ananda Bagdi and sentencing them to suffer imprisonment for life and to pay fine of Rs. 5.000/- each in default S.I. for six months u/s 302 / 34, I.P.C. One Dilip Bagdi lodged complaint with the O.C. of Patrasayer P.S. alleging that on 25-2-1995 at about 6.00 p.m. his brother Bhagya Bagdi alias Ajit Bagdi was stabbed to death by Sasthi Bagdi. The father of the informant died about a year prior to the lodging of the complaint. Gangarani Bagdi. the mother of the informant, had an illicit relation with Sasthi Bagdi from before the death of her husband. Following the discussion in the Salish, the mother of the informant was no longer willing to continue any relationship with Sasthi. But very often Sasthi tried to have illicit relation with Gangarani forcibly. On the date of incident in the evening Sasthi and his elder brother Ananda being highly excited entered into the house of the informant and tried to lift Gangarani. The informant with his brothers resisted and Ananda with the help of "kencha" and Sasthi with the help of dagger (chora) attacked the informant and his brothers. The informant somehow managed to escape and took shelter in the house of one Ghosh. The second brother of the informant could not escape and

he was assaulted in his back and neck by means of dagger. The aunt of the informant tried to resist but she was assaulted on her leg by Ananda Bagdi by means of "kencha".

2. After the receipt of the complaint the P.S. case was started u/s 302 / 324, I.P.C. After completion of investigation charge sheet was submitted.

The learned trial Judge on perusal of the materials on record framed charge u/s 302 / 34, I.P.C. and 324 / 34, I. P.C., against both the accused persons to which they pleaded not guilty and claimed for trial.

In this case the prosecution examined as many as 20 P. Ws, including the persons of the neighborhood, the witnesses of seizure, Autopsy Surgeon and I. O. P.W. 1 Falguni Ghosh. P.W. 2 Kalidasi Delut, P.W. 9 Yudhithir Ghosh, P.W. 11 Swapan Ghosh. P.W. 15 Dilip Bagdi (de facto complainant) were declared hostile.

3. The learned Trial Judge upon consideration of the materials on record was pleased to pass the Judgment of conviction and sentence holding that both the accused persons committed the murder of Bhagya Bagdi in the manner as stated by the prosecution but, the charge u/s 324, I.P.C. against the Ananda Bagdi was not proved as the injured Kalidasi was declared hostile and did not make any allegation against accused Ananda Bagdi. The learned Trial Judge observed that in the result the charge u/s 302 / 34, I, P.C. as framed against both the accused persons was proved beyond any manner of doubt, but, the charge u/s 324 I.P.C. against Ananda Bagdi failed. The learned Trial Judge ultimately convicted Sasthi Bagdi and Ananda Bagdi u/s 302 / 34, I.P.C. and passed the sentence as aforesaid. The learned Judge acquitted Ananda Bagdi of the charge u/s 324, I.P.C.

4. Mr. Sudip Kumar appearing on behalf of the appellants submits that as against Ananda charge u/s 302, I.P.C. cannot stand, inasmuch as. there is no evidence to show that Ananda shared the common intention of inflicting assault on Bhagya and he cannot be convicted u/s 302 with the aid of Section 34, I.P.C. Mr, Kumar contends that as against Sasthi the offending weapon i.e. the blood soaked knife was not sent for examination and report by F.S.L. It is contended that Gangarani Bagdi was not examined and there is no explanation for her non-examination. Mr. Kumar contends that the another son of Gangarani was not examined and there is no explanation for such non-examination.

It is further contended that the offence was committed at 18.00 hours on 25-2-1995 and it was reported to the P.S. on 26-2-1995 at 7.15 hours and there is evidence to show that Madanbabu and Pranab got sufficient time for fabrication in the matter of lodging of the complaint. Mr, Kumar submits that the place of occurrence is doubtful, Mr, Kumar contends that in view of the evidence on record the learned Trial Judge was not justified in recording the order of conviction and sentence.

5. Mr. Ashok Kumar Mukherjee appearing on behalf of the State has referred to the evidence of the witnesses viz. P.W. 3, P.W. 10, P.W. 14 and P.W. 17. Mr.

Mukherjee contends that the recovery of the offending weapon has been proved by the evidence of P.W. 5, P.W. 6, P.W. 10 and P.W. 17. It is contended that the evidence of P. Ws. remains unchallenged on material points.

It is contended that from the evidence of PW 10 it would appear that both the accused persons Ananda and Sasthi ran after the Bhagya and stabbed him by means of a knife three times. Mr. Mukherjee contends that although it is not in the evidence of other P. Ws. that Ananda also chased Bhagya and caught hold of him, it is in the evidence that Ananda was present with Sasthi from the very beginning till the infliction of assault by Sasthi on Bhagya and this goes to show that there was active participation on the part of Ananda and the learned Trial Judge was justified in convicting Ananda u/s 302, I.P.C. with the aid of Section 34, I.P.C.

Mr. Mukherjee contends that the offending weapon was recovered u/s 27 of the Evidence Act in pursuance of the statement made by the accused and there was no suggestion from the defence that the weapon allegedly recovered was not the same with which the assault was allegedly inflicted on Bhagya.

Mr. Mukherjee thus contends that having regard to the evidence on record the learned trial Judge was justified in convicting both the accused persons u/s 302 / 34, I.P.C. and there is no ground to interfere with the findings of the learned trial Judge.

6. The genesis of the occurrence as alleged owes its origin to the illicit relationship of accused Sasthi with Ganga, the mother of the informant, as it appears in the F.I.R. and in the evidence of P.W. 17 and P.W. 18. As regards the assault by accused Sasthi upon Bhagya it is in the F.I.R. that on 25-2-1995 at about 6.00 p.m. Sasthi and Ananda being highly excited entered into the house of the informant and they wanted to lift the mother of the informant. It is also in the F.I.R. that being resisted, Sasthi by means of dagger assaulted Bhagya on the back and the neck. It has also been mentioned in the F.I.R. that several blows were dealt on Bhagya by accused Sasthi.

7. From the ocular version of the prosecution case as stated by p. W. 3, P.W. 10, P.W. 13, P.W. 14, P.W. 17 and P.W. 18 it appears that on the date of incident at about 5.30/6.00 p.m. Sasthi and Ananda went to the house of Ganga and being resisted by the sons of Ganga Sasthi assaulted Bhagya by means of dagger on the verandah of Shankar Ghosh (P.W. 3). From the evidence of these P. Ws. it is clear that Sasthi dealt the blow on Bhagya as a result of which Bhagya succumbed to the injuries.

The evidence of the P. Ws. remained unshaken after undergoing the test of cross-examination. Nothing has been elicited in the cross-examination of these P. Ws. so as to cast any shadow of doubt upon the veracity of their testimony. There is also no doubt as to the place of occurrence which is the verandah of Shankar Ghosh (PW 3).

8. Another important aspect of the prosecution case is the recovery of the offending weapon pursuant to the statement made by the accused u/s 27 of the Evidence Act. Mr. Mukherjee has drawn our attention to the evidence of P.W. 5, P.W. 6, P.W. 10 and P.W. 17 regarding the recovery of the offending weapon. The seizure list in respect of the dagger/knife has been marked exhibit-1. It is in the evidence of P.W. 5, P.W. 6 and P.W. 17 that Sasthi led the police to his house wherefrom he brought out the dagger and handed over it to the police in their presence and the seizure list was also prepared on the spot wherein they signed. Nothing has been elicited in the cross-examination of the P. Ws. so as to cast any shadow of doubt on the said recovery of the offending weapon. Mr. Kumar in this regard submits that the offending weapon has not been sent to the F.S.L. for examination and report. The I. O. (P.W. 20) has stated that he did not send the seized articles for chemical expert's report to ascertain whether there was any human blood with the seized articles or not.

We are of the considered view that in view of the convincing evidence of the P. Ws. as to the infliction of assault on Bhagya and the recovery of offending weapon pursuant to the statement of accused Sasthi, the non-examination of the weapon by the F.S.L. would not in any way shake the veracity of the prosecution case.

9. As regards the medical evidence, the doctor (P.W. 7) has noted the following injuries on the dead body of Bhagya Bagdi aged 17 years:

- a) One sharp cutting very deep extending up to cervical vertebrae injury at near right side of neck of sterno clavicular Joint measuring 1 1/2" x 1/2" with deep cutting all cervical vessels on right side.
- b) There is 1" x 1/2" sharp cutting incised wound over the manubrium sterni.
- c) There is 2 1/2" x 1 1/2" incised muscles deep injury at right scapular region with bleeding.

In my opinion cause of death is due to shock and haemorrhage of following above injuries by sharp cutting instrument like knife or dagger of ante mortem and homicidal in nature.

All the injuries are sufficient to cause death in ordinary course of nature.

In the cross-examination P.W. 7 has stated this type of injury can be caused if anyone is stabbed by a knife.

10. We find that the ocular version of the prosecution case finds ample corroboration from the evidence of the Autopsy Surgeon. So having regard to the evidence of the P. Ws. exhibited documents, we are of the considered view that accused Sasthi assaulted Bhagya with dagger (chora) as a result of which Bhagya succumbed to the injuries. The learned Trial Judge therefore, was justified in convicting the accused Sasthi and passing the sentencing as aforesaid. We do not find any ground to interfere with the order of conviction and

sentence as recorded by the learned Trial Judge in respect of appellant Sasthi.

11. As regards the conviction and sentence in respect of appellant Ananda it in the evidence of P.W. 10 that Ananda and Sasthi ran after Bhagya and caught hold of Bhagya by the side of their "baithakkhana" and then Sasthi stabbed by a knife three times on the person of Bhagya. From the materials on record we find that only PW 10 has stated that Ananda also chased and caught hold of Bhagya. Excepting P.W. 10 no other P. Ws. stated that Ananda ran after Bhagya and caught hold of him. Moreover, in the F.I.R. there is no mention that Ananda ran after Bhagya and took active part in the matter of infliction of assault upon Bhagya.

The allegation against Ananda as stated in the F.I.R. is that he inflicted assault on Kalidasi on her leg by means of "kancha" and as Kalidasi (P.W. 2) did not support the infliction of injury upon her, the accused Ananda was acquitted by the learned Trial Judge.

In order to convict Ananda u/s 302, I.P.C. for causing death of Bhagya with the aid of Section 34 of the I.P.C., the prosecution has to prove that there was prior concert or pre-arranged plan. From the evidence on record we do not find that there was prior meeting of minds amongst the appellants for inflicting assault on Sasthi to cause his death. From the evidence on record we find that both the appellants came to the house of Ganga with the intent to lift Ganga as Sasthi had illicit relation with Ganga and on being resisted, Sasthi dealt the fatal blow on Bhagya as a result of which he succumbed to the injuries. The lone testimony of P.W. 10 that Ananda also chased and caught hold of Bhagya is not sufficient to warrant conviction of appellant Ananda with the aid of Section 34 of the I.P.C.

The essential ingredient of Section 34, I.P.C. as to prior meeting of minds is conspicuously lacking and in the circumstances of the case the provision of Section 34, I.P.C. does not come into play.

We are, therefore, of the considered view that the learned Trial Judge was not justified in convicting the appellant. Ananda u/s 302 with the aid of Section 34, I.P.C. The appeal is partly allowed. We, therefore, set aside the order of conviction and sentence in respect of appellant Ananda and he is acquitted of the charge and discharged from his bail bond. We, however, maintain the order of conviction and sentence as recorded by learned Trial Judge against appellant Sasthi Bagdi. The appellant Sasthi Bagdi is directed to surrender before the learned Trial Court within one month from this date, failing which the learned Trial Court will take appropriate steps against him and send him to the Correctional Home for serving out the sentence.

12. Let a copy of this order along with the L.C.R. be sent to the learned Trial Court immediately.

13. Urgent xerox certified copy, if applied for, be handed over to the parties as early as possible.

Alok Kumar Basu, J.

14. I agree.