
(2015) 05 CAL CK 0021
In the Calcutta High Court
Case No : C.R.A. No. 266 of 2010

Sentu Mondal and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 325, 34, 341

Citation : (2015) 05 CAL CK 0021

Hon'ble Judges : Tapash Mookherjee, J

Bench : Single Bench

Advocate : Rajdeep Majumder and Kushal Kumar Mukherjee, for the Appellant;
Faria Hossain, Advocates for the Respondent

Final Decision : Allowed

Judgement

Tapash Mookherjee, J.—The present appeal is directed against the judgment of conviction and order of sentence passed on 15th March, 2010 by the learned Additional Sessions Judge, 2nd Fast Track Court, Berhampore, in Sessions Trial No. 4(7) 2006 (S.C. No. 217/2005). By the aforesaid judgment and order the learned Trial Judge found the appellants guilty of the offence punishable under Section 325 I.P.C. and sentenced the appellants to suffer Rigorous Imprisonment for one year each and to pay fine of Rs. 500.00 (rupees five hundred only) each in default, to suffer Simple Imprisonment for one month more.

2. The facts leading to the present appeal in short, are as follows:-

3. On 19th March, 2004 one Nizamuddin Biswas submitted a written complaint to Jalangi P.S. and thereby alleged that in the previous afternoon all the appellants being armed with lathi, iron rod, belt etc. entered his house and kidnapped his son Bablu Biswas and took his son to the house of one Younush Ali Mondal and assaulted his son there, causing severe bleeding injuries in the person of his son and he and his family members rescued his son from there. The complainant stated further that after the incident his son was at first taken to Sadhikhandier

B.P.H.C. from where his son was shifted to the New General Hospital at Berhampore for better treatment. On the basis of such written complaint Jalangi P.S. case No. 47/2004, dated 19.03.2004 under Sections 448/325/307/34 I.P.C. had been started against the appellants and after completion of investigation charge-sheet under Sections 448/325/307/34 I.P.C. had been submitted against all the appellants. Thereafter, the case had been committed to the Court of Sessions in due course, and lastly the case had been transferred to the Court of learned Additional Sessions Judge, 2nd Fast Track Court, Berhampore for trial.

4. Considering the evidence collected during investigation charges under Sections 448/307/34 I.P.C. had been framed against all the appellants. The appellants denied the charges and pleaded their innocence.

5. Eight witnesses have been examined by the prosecution in the case. Some documents have also been proved by the prosecution. Defence also examined four witnesses. Considering the evidence thus produced, learned Trial Judge found all the appellants guilty of the offence punishable under Section 325 I.P.C. and sentenced the appellants to suffer Rigorous Imprisonment for one year each and to pay fine of Rs. 500.00 (rupees five hundred only) each, in default, to suffer Simple Imprisonment for one month more. Being aggrieved by and dissatisfied with such judgment of conviction and order of sentence the convicted persons filed the present appeal.

6. Mr. Majumder, appearing for the appellants argued that the witness Bablu Biswas (P.W.-3), i.e., the alleged victim is the only direct witness of the alleged incident of assaults, and although, some other witnesses also claimed to have witnessed the incident of assaults, by they cannot be the eye witnesses and the testimony of P.W.-3 and the other witnesses as well, regarding the manner of assaults does not match with the medical evidence on record. He further submitted that P.W.-3 himself and some other witnesses were involved in an incident of eve-teasing on the very day of the incident alleged in this case as proved from the evidence adduced by the defence in the case and in such circumstances learned Trial Court wrongly convicted the appellants just on the basis of the uncorroborated testimony of P.W.-3.

7. In reply, Ms. Hossain, appearing for the State submitted that the injured person in any incident of assault is the best witness in the case. So, learned Trial Court's decision in the case is quite justified in law.

8. Bablu Biswas (P.W.-3) is the alleged victim of the incidents in issue. He stated that on 18.03.2004 at about 6 p.m. all the appellants had taken him to the house of the appellant Younush and assaulted him there severely with lathi, iron rod etc., due to which he sustained injuries all over his body. He also stated that he raised alarm hearing which the villagers as well as his parents had come to the spot after which the appellants left the place. He stated further that after the incident he was taken at first to Sadhikhandier B.P.H.C. and thereafter on the following day he was sent to Berhampore N.G. Hospital where he remained

admitted for about nineteen days.

9. Nizamuddin Biswas, who submitted the F.I.R. died before his evidence was recorded and his brother Bahar Ali Biswas (P.W.-1) was the first witness for the prosecution. He stated that Bablu Biswas (P.W.-3) is his nephew and that in the evening of 18th March, 2004 all the appellants together went to the house of P.W.-3 and took away P.W.-3 to the house of the appellant Younush where the appellants assaulted P.W.-3 with iron rod, lathi etc. causing thereby grievous injuries in the person of P.W.-3 and hearing the cry he went to the place of occurrence and witnessed the incident of assaults.

10. Samsuddin Molla (P.W.-2) stated that on the day of occurrence at about 6 p.m. hearing a cry he rushed near to the house of the appellant Younush and found the appellants together assaulting P.W.-3 with iron rod and fists and blows. He stated further that all the appellants fled away when local persons appeared on the spot.

11. Aroj Biswas (P.W.-4) is also a neighbour of the parties and he stated that in the evening of the day of the occurrence he heard a cry after which he went inside the house of the appellant Younush where he found the appellants assaulting P.W.-3 with iron rod and bamboo sticks.

12. Rabia Bibi (P.W.-5) is the mother of P.W.-3. She stated that in the evening of the day of the occurrence her son was kidnapped by the appellants and that after such kidnap his son was assaulted by the appellants in the house of the appellant Younush and that she herself had witnessed the assaults. She further stated that she had been knocked down by the appellants when she tried to rescue her son. She stated further that after being thus knocked down by the appellants she called the local villagers and with the help of the villagers she could rescue her son from the assaults by the appellants. She also stated that her son had been treated at Berhampore Hospital after being referred from the local Hospital.

13. Sahidul Biswas (P.W.-7) was also a neighbour of the parties and he stated that on the day of the incident at about 6 p.m. he found the appellants assaulting P.W.-3 inside the house of the appellant Younush Mondal. He further stated that he himself as well as some other villagers assembled on the spot during the incident of assaults.

14. S.I., Tulsi Das Guha (P.W.-6), investigated and submitted the charge-sheet in the case and Dr. T.K. Ghosh (P.W.-8) treated P.W.-3 on 19.03.2004 at N.G. Hospital at Berhampore and according to him he found "a fracture on lower end of ulna" of P.W.-3.

15. As mentioned earlier defence also examined four witnesses in the case.

16. Siuli Khatoon (D.W.-1) is a daughter of the appellant Younush Mondal. She stated that on 18.03.2004 when she was returning from her School with her friends she was intercepted and caught hold of by P.W.-1 and P.W.-3 and one Leju had taken her to their house by force and hearing her cry the villagers came and

saved her. She stated further that her father was out of home in that evening and hence, on the following morning his father went to the P.S. to lodge a complaint but as the police refused to start any case a complaint had been subsequently submitted in the Court by her father.

17. Babita Khatun (D.W.-2) is a Schoolmate of D.W.-1. She stated that on 18.03.2004 while Siuli (D.W.-1), Ruma and she herself were returning home then on the way P.W.-3 caught hold of D.W.-1 and hearing their cries the villagers came to the spot and rescued them from the hold of P.W.-3.

18. Samsul Hoque (D.W.-3) was a teacher of Chuapur-Durlovpur Bidyalaya under P.S. Jalangi. He produced a registrar of students and according to him D.W.-1 attended her Classes on 18.03.2004, in their School.

19. Soumitra Nandi (D.W.-4) is a trader of Jalangi Bazar under Jalangi P.S. He has only proved that the appellant Younush Ali has a shop of electrical goods at Jalangi Bazar.

20. As discussed earlier, P.W.-1, P.W.-2, P.W.-4, P.W.- 5 and P.W.- 7 wanted to say that they had witnessed the appellants assaulting P.W.-3. But P.W.-3 himself stated that during the assault on him the appellants were only present on the spot and none else was there at that time. So, from such statement of P.W.-3 the credibility of the other witnesses mentioned above is in doubt. In fact, learned Trial Court also convicted the appellants mainly on the basis of the testimony of P.W.-3.

21. As mentioned earlier the defacto complainant Nizamuddin Biswas died before his examination in the Court. However, his brother Bahar Ali Biswas (P.W.-2) had proved only the signature of Nizamuddin on the written complaint (Exhibit-1) and prosecution made no attempt to prove the contents of the written complaint. So, the first version of the complainant before the police is not known.

22. According to the prosecution's case the alleged incident took place at about 6 p.m. on 18.03.2004 but the written complaint had been submitted to the P.S. in the morning of 19.03.2004. Although, the distance of the police station from the complainant's village was just four kilometre only. Ms. Hossain argued that cause of medical treatment there was the delay. But neither the victim, i.e., P.W.-3 nor any other witness claimed so. That apart, P.W.-3 was admitted in a local Hospital in the evening of the occurrence and he had been subsequently admitted to the District Hospital on the following day. So, the aforesaid explanation for delay is not persuasive.

23. According to P.W. 1, the place of occurrence was on the road outside the house of the appellant Younush, P.W.-2 also described the P.O. to be a place near to the house of the appellant Younush. P.W.-3 stated that he had been assaulted inside the house of the appellant Younush. Alike was the versions of P.W.-4, P.W.-5 and P.W.-7 also. The description of place of occurrence in the sketch map prepared by the I.O. (Exhibit-2) is vague. In result, the exact place of occurrence

is not proved in the case.

24. According to P.W.-1, P.W.-3 was assaulted with iron rod and lathies at random, causing bleeding injuries in many portions of his body. He further narrated that P.W.-3 received more than 15 to 16 blows. P.W.-2 also stated that P.W.-3 was assaulted with iron rod for 10 to 12 times causing bleeding injuries. P.W.-3 also stated that he was beaten up severely by the appellants by iron rod and his right hand was injured and he sustained injuries all over his body. According to P.W.-4, P.W.-3 was beaten up by iron rod and bamboo sticks. The versions of P.W.-5 and P.W.-7 on the point are also the same. But the doctor (P.W.-8) who treated P.W.-3 stated that he found only one injury of fracture on the "lower end of ulna" of the patient. He further clarified during his cross examination that he did not find any bleeding injury on the body of the patient. So, there is a gross contradiction between the oral evidence of the witnesses and the medical evidence and obviously this is a gross lacuna in the prosecution case. The decisions reported in Jassa Singh and Others Vs. State of Haryana, AIR 2002 SC 520 : (2002) CriLJ 563 : (2002) 1 Crimes 236 : (2002) 1 JT 593 Supp : (2002) 1 SCALE 26 : (2002) 2 SCC 481 : (2002) AIRSCW 80 : (2002) 1 Supreme 1 Amar Singh and Others Vs. State of Punjab, AIR 1987 SC 826 : (1987) CriLJ 706 : (1987) 1 JT 465 : (1987) 1 SCALE 374 : (1987) 1 SCC 679 : (1987) 1 UJ 671 cited by Mr. Majumder, are relied on the point. From the medical papers, i.e., Exhibit-3 it is not found that P.W.-3 or any of his family members stated any history of the assault or the name of the assailants in the Hospital.

25. As discussed earlier, defence had picked up a specific case to the effect that on the day of the alleged incident it was P.W.-3 Babalu Biswas who had teased and physically harassed the daughter of the appellant Younush on the road.

26. Suili Khatoon daughter of the appellant Younush Ali examined as D.W.-1 in her evidence stated the aforesaid fact. From Exhibit-D, E, and F it is found that on the basis of a complaint by one Dianus Ali Mondal. Jalangi P.S. Case No. 2008/2005 dated 26.12.2005 had been started against P.W.-1 and P.W.-3 in connection with the fact stated by D.W.-1 in this case and charge-sheet under Sections 341/354/323/34 I.P.C. had been submitted against P.W.-1 and P.W.-3. The date of incident of that case is stated on 18.03.2004 which happens to be the date of the present incident also. Prima facie case was found after investigation due to which charge-sheet was submitted in that case.

27. Law is not such that whenever defence alleges certain specific facts in support of their innocence, such facts have to be established by the defence beyond all reasonable doubts. So, in view of the aforesaid evidence the probability of the defence's case cannot be totally ruled out.

28. So, from what has been discussed above it is found that there are sufficient reasons for not attaching full credibility to the testimony of P.W.-3. Learned Trial Court committed error by finding the appellants guilty of the charges brought against them just on the basis of the testimony of P.W.-3. The judgment of

conviction by the learned Trial Court is not, therefore, sustainable in law.

29. In view of the decisions above the present appeal is allowed. The judgment of conviction and sentence dated 15.03.2010 passed against the appellants are hereby set aside. All the appellants are found not guilty of the charge under Section 325 I.P.C. and they are accordingly acquitted. Bail bonds furnished stand discharged.

30. The L.C.Rs. along with a copy of this judgment be sent back to the Trial Court.

31. Urgent certified photocopies of this judgment, if applied for, be given to the learned Advocates for the parties upon compliance of all formalities.