
(2013) 07 CAL CK 0048
In the Calcutta High Court
Case No : C.R.A. No. 42 of 2008

Sufal Mondal Alias Subal and Another	APPELLANT
Vs	
State of West Bengal	RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Citation : (2013) 3 CALLT 420

Hon'ble Judges : Subal Baidya, J; Ashim Kumar Roy, J

Bench : Division Bench

Advocate : Sreyashee Biswas, for the Appellant; Manjit Singh, Ld. P.P., for the Respondent

Judgement

Ashim Kumar Roy, J.—In this criminal appeal the appellants challenged their conviction u/s 304/34 IPC and u/s 307/34 IPC wherein they were sentenced to suffer imprisonment for life and R.I. for 5 years with fine and default clause respectively.

The case of the prosecution, in brief, is as follows:

The victim is a neighbour of the appellants who are father and the son. On the date of the alleged incident some quarrel took place between the victim Dukhu Mondal in one side and the appellants on other side over the use of village path, at that time Dukhu was assaulted by the appellants and then soon thereafter while he was taking to the hospital, he was further assaulted which ultimately resulted in his death.

2. The learned Counsel for the appellants first draws our attention to the evidence of the post mortem doctor P.W. 9 and pointed out, except stating the death was due to the shock and haemorrhage from the above injuries and the same were ante mortem and homicidal in nature, nothing has been disclosed by the P.W. 9 in his deposition. There is no evidence that the injuries were of such a nature that were sufficient in ordinary course of nature to cause death. She then draws our attention to the evidence of P.W. 8 who treated the victim Manik

Mondal at Jangipur Hospital as Emergency Medical Hospital and pointed out that according to the history of assault noted in the injury report, the only allegation was against Sufal Mondal and one Bibhuti Mondal, but there is no allegation against the appellant Chhechru Mondal. She then contended this fateful incident happened when the villagers were quarrelling over the right of path and the victim was assaulted on the spur of the moment. This is a case where conviction is one u/s 304 IPC and not a conviction u/s 302 IPC. She submitted that the appellants are in jail for more than 5 years without remission. She contended although she has much to argue against the order of conviction of Chhechru Mondal, but considering the above facts she is only soliciting that considering the nature of offence the sentence be reduced to the period already undergone.

3. We have heard the learned Counsel appearing on behalf of the appellants as well as the learned Public Prosecutor.

4. We do appreciate the contention of the learned Advocate of the appellant, but before formation of any opinion as to the same we intend to examine the evidence first. We find the prosecution case depends on ocular account of assault. In this regard the prosecution relied on the evidence of P.W. 1 Manik Mondal, P.W. 2 Bimala Mondal, P.W. 3 Mantari Mondal, P.W. 4 Jayanta Mondal and P.W. 13 Chittaranjan Mondal.

5. According to the P.W. 1 Manik Mondal, we find that while one Rupal and Dukhu were passing through the village path, the appellant Sufal protested and assaulted the victim Dukhu with a lathi on his forehead, but the matter was settled there. Thereafter, when the victim was taking to the doctor, once again he was obstructed and the van puller was compelled to stop the rickshaw. Then the appellant Sufal assaulted the victim Dukhu with the "Henso" in his hand. During trial the Rupal Mondal, who was allegedly with the victim at the time when he was first assaulted, was not examined. The witness admitted in his cross-examination, except on the date of the incident, there was no quarrel between the appellant and the victim.

6. According to the P.W. 2 Bimala Mondal, when the victim and his brother Rupal Mondal were going to field with their plough and bullocks, the appellant Sufal Mondal raised objection over the use of the passage and then a quarrel took place between them and Sufal and Chhechru assaulted him with a lathi. Thereafter, when they were taking the injured to the doctor on their way Chhechru and Sufal obstructed them and Sufal assaulted Dukhu with the "henso" in his hand. It appears from the tenor of her evidence that she was not present when the appellant was first assaulted.

7. P.W. 3 Mantari Mondal was also not present at the time when victim was first assaulted. According to her, while they were taking the victim to the doctor, both the appellants Chhechru and Sufal resisted them and at that time Sufal assaulted the victim with the "henso" in his hand. We find defence by cross-examining her and the P.W. 16 Investigating Officer of the case contradicted her evidence that

she saw the incident.

8. P.W. 4 Jayanta Mondal also did not witness the first part of the incident. According to him, while they were going to the doctor with the victim, both the appellants obstructed them on their way and the appellant Sufal was armed with a "henso" and Chhechru was armed with a lathi. At that time Sufal assaulted Dukhu with the "henso" in his hand. We find the defence cross-examining both the witness P.W. 4 and the P.W. 16 Investigating Officer of the case contradicted his evidence that both Sufal and Chhechru were armed with "henso" and lathi.

9. The other eye-witness to the occurrence P.W. 13 Chittaranjan Mondal claimed to be present in a tea stall when victim was assaulted on his way to the doctor. According to the said witness, at that time he was sitting in a tea stall and found that the victim along with others were going along the road in a rickshaw van and at that time Sufal went near to them and assaulted the victim with the "Henso" in his hand and thereafter on being chased by others he fled away. This witness, a co-villager has not named Chhechru, was present at the spot at the time when victim was assaulted for the second time.

10. We also find from the evidence of the P.W. 8 who attended the injured at the hospital that, according to the history of assault, the victim was assaulted by Sufal Mondal and Bibhuti Mondal. There is no mention that Chhechru was one of the assailants.

11. Now on a very careful examination of the evidence of the witnesses we find there is nothing to show when the victim was first assaulted by the appellant Sufal, Chhechru was present. Then we find in the second incident according to P.W. 1 Manik Mondal, P.W. 2 Bimala Mondal and P.W. 3 Mantari Mondal, only allegation was that appellant Chhechru and Sufal obstructed the rickshaw van in which the victim was going to the hospital. There is no allegation that either Chhechru was armed with any weapon or that he took any part in the assault. Although according to the P.W. 4, at the time of incident while Sufal was armed with "henso", Chhechru was armed with a lathi. He also did not make any allegation that Chhechru took part in the assault. The defence cross-examining the P.W. 4 and the P.W. 16 Investigating Officer of the case contradicted his evidence that Chhechru was armed with the lathi because the P.W. 4 did not disclose to the P.W. 16 the Investigating Officer of the case that they were armed with "henso" and lathi. The only other witness, P.W. 13 Chittaranjan Mondal, a co-villager who at the time of the occurrence was in a tea stall in front of the spot, has not even alleged that appellant Chhechru was present when victim was assaulted when he was proceeding to the doctor in a rickshaw van. We further find from the evidence of P.W. 8 that in the history of assault recorded in the injury report, the name of Chhechru was not noted as one of the assailants.

12. Having regard to the evidence as aforesaid undoubtedly the appellant Chhechru Mondal did not take part in assaulting the victim Dukhu. There is no allegation that he was armed with any weapon of assault or assaulted the victim.

Although P.W. 4 Jayanta Mondal alleged that Chhechru was armed with a lathi, but having regard to the facts he has not disclosed the same to the Investigating Officer of the case, it will not at all be proper to rely on that piece of evidence. Now from the evidence of P.W. 13 Chittaranjan Mondal, a covillager and present in a tea stall in front of which the incident of assault took place, we find the said witness has not even alleged about the presence of the appellant Chhechru Mondal at the time of the incident, coupled with the evidence of P.W. 13 we find in the history of assault noted in the injury report of the victim this appellant has not been named as one of the assailants of Dukhu. We find, if at all, the prosecution has only been able to establish that the appellant Chhechru obstructed the rickshaw van in which victim was going to the doctor from proceeding further. Neither there is any evidence that appellant Chhechru at the time was armed with any weapon of assault nor there is any evidence that he took part in assault or in any manner whatsoever instigated the other appellant Sufal Mondal to assault the victim, therefore, the prosecution has not been able to prove the charge against the appellant Chhechru Mondal that the victim Dukhu was assaulted by the appellant Sufal and appellant Chhechru shared common intention with him. We have, therefore, no hesitation to hold that so far as the appellant Chhechru Mondal is concerned, the prosecution has not been able to establish the charge against him. Accordingly, the order of conviction and sentence passed against the appellant Chhechru Mondal stands set aside.

13. Now, coming to the case against the appellant Sufal Mondal we find the prosecution very much succeeds to prove the charge against him and he was rightly charged u/s 304 IPC and convicted thereunder. So far as the contention of the learned Advocate of the appellant that sentence against him be brought down to period already undergone in our opinion that will not at all be justified. We are however, of the opinion, in the genesis of the case the justice will be subserved if the sentence is altered to R.I. for 8 years and the fine amount of Rs. 10,000/- be increased to Rs. 25,000/- and in default, the accused Sufal Mondal be sentenced to suffer rigorous imprisonment for one year more and if the fine amount is realized, the entire amount be paid to the legal heir of the deceased Dukhu Mondal.

14. In the result, this appeal is partly allowed. While the order of conviction passed against the appellant Chhechru Mondal is set aside and he is acquitted, the order of conviction passed against the appellant Sufal Mondal is not interfered with, but the sentence of imprisonment for life is reduced to R.I. for 8 years and fine amount is increased from Rs. 10,000/- to Rs. 25,000/- with a default clause that on his failure to pay the fine amount, he has to suffer rigorous imprisonment for one year more. The fine amount, if realized, be paid to the legal heir of the deceased Dukhu Mondal.

15. The appellant Chhechru Mondal who is now in custody, at once be released if not detained in connection with any other case. The office is directed to send down the Lower Court Records.

Urgent Xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.

Subal Baidya, J.

I agree.