
(2018) 03 CAL CK 0029
In the Calcutta High Court
Case No : C.R.A. 482 of 2010

SUNNY RAI

APPELLANT

Vs

THE STATE OF WEST BENGAL

RESPONDENT

Date of Decision : 09-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302, 307, 326, 448
Code of Criminal Procedure, 1973 — Section 164, 313, 428
Indian Evidence Act, 1872 — Section 32, 147, 157

Citation : (2018) 03 CAL CK 0029

Hon'ble Judges : JOYMALYA BAGCHI, J;RAJARSHI BHARADWAJ;J

Bench : Division Bench

Advocate : Subir Ganguly, Sumanta Ganguly, Sudip Ghosh, Bitasok Banerjee

Final Decision : Dismissed

Judgement

Rajarshi Bharadwaj, J

The Appeal is directed against judgment and order dated 19th April, 2010 passed by the Learned Additional District & Sessions Judge, Fast Track

Court, Kurseong in connection with Sessions Case No. 3 of 2008 (G. R. Case No. 64 (1) of 2007) convicting the appellant for commission of offence

punishable under sections 448 and 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life.

Prosecution case, as alleged, against the appellant is to the effect that on 30th July, 2007 at around 7:00 P.M. while the defacto complainant Smt.

Balika Rai along with her husband Shyamlal Rai were sitting inside their house on the ground floor, the accused Sunny Rai of the same locality

being armed with sharp cutting Khukri came in front of the house of Shyamlal Rai in order to kill him and then the de-facto complainant namely Balika

Rai rushed to the house of her neighbourer for help, leaving her husband there and in the meantime accused Sunny Rai entered into the house of

Shyamlal Rai and attacked him by means of Khukri causing grievous hurt on his person.Â As a result of such physical assault by khukri, the left hand

above wrist and right little finger of Shyamlal Rai was chopped off but Shyamlal Rai managed to escape and took shelter at the house of his elder

brother, from where he was taken to Mirik B.P.H.C. first and from there he was taken to the North Bengal Medical College & Hospital (in short

N.B.M.C. & H) where he expired on 31st July, 2007 in the evening.Â Alleging such facts or over the incident, a written complaint was lodged at

Mirik police station and on the basis of that F.I.R., a case being Mirik P.S. Case No. 14/2007 dated 30th July, 2007, a case under sections 448, 326 &

307 of the Indian Penal Code was started and on the death of Shyamlal Rai on 31st July, 2007 at N.B.M.C. & H., section 302 I.P.C. was added to the

F.I.R.

Investigation of the caseÂ was taken up by the police forthwith and on completion of the investigation, the police of Mirik police station submitted

charge-sheet under sections 448 and 302 of the Indian Penal Code against the F.I.R. named accusedÂ person namely Sunny Rai.

Offence under section 302 of the Indian Penal Code was committed to the Court of Sessions Judge, Darjeeling for disposal and thereafter the case

was transferred to the Learned Additional District & Sessions Judge, Fast Track Court, Kurseong court for trial, charges under sections 448 and 302

of the Indian Penal Code were framed against the accused Sunny Rai for which he pleaded not guilty and claimed for trial.

During trial, prosecution examined 26 witnesses including the de-facto complainant, Doctor of the Mirik B.P.H.C. Autopsy Surgeon and the

Investigating Officer of this case.

After the conclusion of the examination of the witnesses, the accused person was examined as per provision under section 313 of the Code of

Criminal Procedure, who denied that he had committed the offence of murder of Shyamlal Rai.

The defence case, as it appears from the trend of cross examination of the prosecution witnesses is that of total denial as alleged by the

prosecution.Â Accordingly the accused person Sunny Rai prayed for an order of

acquittal from the instant case.

In conclusion of the trial, the trial Judge by judgment and order dated 19th July, 2007 convicted the accused and sentenced him to suffer rigorous

imprisonment for one year for the offence under section 448 I.P.C. and to suffer rigorous imprisonment for life and to pay fine of Rs. 5000/- in

default, simple imprisonment for six months for the offence under section 302 I.P.C. It was also ordered that both the sentence shall run

concurrently.

Mr. Subir Ganguly, learned advocate appearing for the appellant argued that not a single witness has seen the gruesome assault by the accused Sunny

Rai on the victim. The evidence on record does not establish offence of murder against the appellant. There is no evidence that the appellant was

present at the place of occurrence when the incident happened. P.W. 1 and P.W. 2 also did not find the appellant at the place of occurrence. He

further submits that the written complaint was not drafted by P.W. 1 nor she could remember who drafted it. He accordingly prayed for acquittal of

the appellant.

On the other hand, Mr. Sudip Ghosh along with Mr. Bitasok Banerjee, learned advocate appearing for the State argued that the evidence-on-record

particularly that of P.W.1 to P.W. 4 who are the most natural witnesses had established the prosecution case beyond reasonable doubt. It is also

submitted that P.W. 17 and P.W. 25, the medical experts have categorically deposed that the victim had suffered injuries by sharp cutting weapon

resulting in his death. The ocular version is corroborated by the medical evidence in the instant case. Accordingly, the appeal is liable to be

dismissed.

Let me examine the rival versions in the light of the evidence on record.

P.W. 1 Balika Rai, wife of the victim Shyamlal Rai in her evidence has stated that on 30th July, 2007 at 7:00 P.M. accused Sunny Rai being armed

with Khukri came outside their house and called Shyamlal outside and at that she came out and asked Sunny Rai to leave the place and after calling

Bina Rai, her next door neighbour went to call Kharka Daju for help. On her return she found Shyamlal Rai in the house of Puspa Lal Rai in injured

condition and his left hand was chopped off and he had injury on his left chest. She was informed that the accused Sunny Rai assaulted her husband

causing grievous bleeding injury on his person and she along with Anita Rai, Barsa Rai and Robin Rai took Shyamlal Rai to Mirik B.P.H.C. for

treatment and from there, he was taken to North Bengal Medical College & Hospital for better management but he died on the next day i.e. on 31st

July, 2007 at the hospital. P.W. 1 has further stated that on 30th July, 2007 at 10:00 P.M. she lodged a written complaint at Mirik Police Station. From

the cross-examination of P.W. 1, I find that P.W. 1 is not the eye-witness of the incident.

P.W. 2 is Bina Rai, aunt of the accused Sunny Rai. She has stated before this court that on 30th July, 2007 at about 6:00 P.M. Sunny Rai was

shouting at Shyamlal Rai to come out of his house and Sunny Rai was armed with Khukri in his hand P.W. 1 (Balika Rai) called her and other

neighbourers for help and thus she came out towards the house of Balika Rai. It is her evidence that Sunny Rai was shouting saying that he would

kill Shyamlal Rai, standing on the court yard of Shyamlal Rai. She had gone to the house of Shyamlal Rai with one Vivek and tried to pacify Sunny

Rai and advised him to go away and at that time accused Sunny Rai threatened to assault her and on being frightened she left the place. P.W. 2 has

further stated that she heard that Sunny Rai was knocking the door of Shyamlal Rai and she heard a commotion inside the house of Shyamlal Rai.

Then she heard that Shyamlal Rai was calling her saying that his hand had been chopped off and Shyamlal Rai went to the house of Puspa Lal Rai.

Thereafter Shyamlal Rai was taken to Mirik B.P.H.C. and from there he was taken to Siliguri and died at Siliguri.

From the cross-examination of P.W.2, I find that the accused Sunny Rai is her nephew, i.e. the son from her elder brother. In her cross-

examination, she stated that she heard from the mouth of Shyamlal Rai that his hand has chopped off by the accused Sunny Rai and she saw Shyamlal

Rai to run towards the house of Puspa Lal Rai.

P.W. 3 is Anita Rai wife of Puspa Lal Rai and the sister-inlaw of the victim Shyamlal Rai. She deposed that on 30th July, 2007 at about 7:00/8:00

P.M. her daughter Sujan Rai informed her that Shyamlal entered their house with bleeding injury on his hand and she ran towards him and saw

Shyamlal Rai sustained bleeding injury on his person. It is her evidence that thereafter she and her daughter Sujan Rai put Shyamlal Rai on the bed

and bandaged the wound and asked Shyamlal Rai who assaulted him with a sharp cutting weapon to which the latter told the name of one Sunny Rai

and on inspection she found bleeding injury on his hand and chest. It is also her evidence on record that Shyamlal Rai was taken to Mirik B.P.H.C.

and from there he was taken to N.B.M.C. & H, where he died.

P.W. 4, Bibek Rai, is the son of the deceased Shyamlal Rai. In his evidence, he stated before this court that on 30th July, 2007 at about 7:00/7:30 P.M.

accused Sunny Rai came to their house being armed with Khukri in his both hands and was shouting that he would kill his father Shyamlal Rai. It is

his evidence that Bina Rai (P.W. 2), their neighbour came outside and asked why he was shouting in that manner and then Sunny Rai entered their

house and P.W. 2 (Bina Rai) followed him but Sunny Rai pushed Bina Rai. It is also his evidence that thereafter his father came outside and Sunny

Rai assaulted him and he lost one of his hands due to the said incident.

In cross-examination, P.W.4 has stated that Bina Rai came outside and forbade Sunny Rai from doing act and Bina Rai returned to her house and

his father came running in injured condition and at that time he was standing on the road.

P.W. 5 Sujan Rai daughter of Puspa Lal Rai has stated in her evidence that on 30th July, 2007 at about 7:00/8:00 P.M. Shyamlal Rai entered their

house with bleeding injury on his hand and chest and lay down on their bed. It is her evidence that Shyamlal Rai stated to her that accused Sunny

Rai cut his hand and requested her to tie the same. In cross-examination she stated that she was not interrogated by the Investigating Officer.

P.W. 6 is Hari Rai, the owner-cum-driver of a Maruti Van Being No. WB 77 - 3902. He deposed before this court that on 30th July, 2007 at

about 7:00/7:00 P.M. Anita Rai telephoned him and requested him to take his vehicle to her house in order to take a patient to the hospital and took

Shyamlal Rai to the hospital by the vehicle and he saw injury on the chest and his one palm was chopped off.

P.W. 7, Binod Rai, is the father of the accused Sunny Rai. He did not support the prosecution case and as such he was declared hostile on the prayer

of prosecution.

P.W. 8 is Bidhan Rai. He did not support the alleged prosecution case and was declared hostile on the prayer of prosecution.

P.W. 9, Bikash Tamang is a seizure witness. He has stated in his evidence that Officer-in-Charge, Mirik police station prepared a seizure list by seizing a Khukri from the jungle in presence of the accused Sunny Rai and he signed on the seizure list. The signature of the witness on the seizure list was marked as exhibit 3. It is his evidence that the accused Sunny Rai showed the Khukri in the jungle and Barababu seized the same by preparing a seizure list and at that time one unknown person was present there. During the trial the seized article i.e. Khukri was produced before the court and P.W. 9 identified the same which was recovered from the jungle. P.W. 9 in his cross-examination has stated that he cannot state the date of recovery of the Khukri and the paper was blank where he was made to sign.

P.W. 10 is Kamal Dewan, another seizure witness deposed that the Barababu of Mirik P.S. took him to a place from where Sunny Rai brought out a Khukri from the bush and the Barababu seized the same by preparing a seizure list after showing the khukri to him. The signature of P.W. 10 on the seizure list was marked as exhibit 3/1. During the course of trial Khukri was produced for identification and P.W. 10 identified the same as the handle of the Khukri was broken. In cross-examination of P.W. 10, he stated that he signed on the seizure list on the road.

P.W. 9 and P.W. 10 had stated that the accused Sunny Rai brought out the Khukri from the bush and there is no anomaly as regards to the recovery.

P.W. 11, Binita Chettri is attached to Mirik B.P.H.C. as a Group - D staff. She in her evidence has stated that on 30th July, 2007 at about 8:00

P.M. one Shyamlal Rai was brought to the B.P.H.C., Mirik in serious bleeding condition having injury in his hand, thigh and chest and he was referred to N.B.M.C. & H. There is no denial in her cross-examination. Therefore, it is established from her evidence that Shyamlal Rai suffered a serious bleeding injury on his person.

P.W. 12, Raju Routh an employee of B.P.H.C., Mirik also corroborated the evidence of P.W. 11.

P.W. 13 is Amar Bahadur Rai. It is clear from his evidence that he saw the victim Shyamlal Rai at Mirik B.P.H.C. in bleeding condition on his person and his hand was chopped off. P.W. 13 also corroborated the evidence of P.W. 11 and 12.

P.W. 14, ASI, Nirmal Das, who held the inquest over the dead body of the deceased Shyamlal Rai in presence of his family members duly

identified by Janaklal Rai, Biren Rai and Bal Bahadur Rai.

P.W. 15, Mr. Nilanjan De is the Ld. Judicial Magistrate attached to Kurseong Court and at that relevant time he recorded the statements of the

witnesses under section 164 of the Code of Criminal Procedure. He has stated in his evidence before this court that on 6th August, 2007 he

recorded the statement of Bina Rai and Vivek and no inconsistency in the cross examination of P.W. 15 was found to cast shadow of doubt

about it.

P.W. 16 is Ajoy Rai. He in his evidence has stated that on 30th July, 2007 he went to the house of the deceased as per request of the wife of the

deceased and on reaching there, he found none but he found one parted left hand from the wrist and a portion of little finger there and the police

seized the imputed portion of the said left hand and little finger by preparing a seizure list and he signed on the said seizure list. The signature of

P.W. 16 on the seizure list was marked as exhibit 7. It is his evidence that on the same date the police officer seized some soil, a pillow cover and

bed-sheet by preparing a seizure list and his signature was taken in the said seizure list. During trial, the seized articles were produced before this

court and P.W. 16 identified the said seized articles.

P.W. 17 is Dr. Mahanada Sarkar who was attached to Mirik B.P.H.C., on 30th July 2007 as Medical Officer. According to P.W. 17, on 30th July,

2007 he was posted at Mirik B.P.H.C. as Medical Officer and on that day at 8:30 P.M. one Shyamlal Rai came to the health centre and on

examination he found (1) amputation of left hand above wrist (2) amputation of right little finger and (3) deep cut injury in the anterior left chest wall

measuring 10" X 3" creating a cavity (4) bone deep cut injury at the right left arm (5) bone deep cut injury at ring finger and abrasions on left

forearm. The injury report prepared by him was marked as exhibit 11. Cross-examination of P.W. 17 has confirmed that the patient and the

patient party gave the history of assault to him. P.W. 17 in his evidence confirmed the name of the assailant as Sunny Rai.

P.W. 18 is Jitendranath Roy and he accompanied S.I. Bhajan Sarkar to the house of deceased Shyamlal Rai and there S.I. Bhajan Sarkar held inquest

over the left hand and right little finger in his presence and he signed on the said inquest report. The signature of P.W. 18 on the inquest is marked as exhibit 12.

P.W. 19 is Adip Rai. He deposed that on 30th July, 2007 at about 10:00/10:30 P.M., while he was returning home from the construction site of his new home, some person of the locality asked him to look after the house of Shyamlal Rai and at about 11:30 P.M. the police came there and seized the left palm, a portion of little finger, bed-sheet, pillow cover and some blood stain earth by preparing a seizure list and he signed on the said seizure list.

P.W. 20 is Janaklal Rai. He is not a witness of the occurrence but he heard about the incident and went to Mirik B.P.H.C. and saw Shyamlal Rai in a stretcher whose left hand was fully amputated from the wrist and he had an injury on his left chest and left shoulder. It is his evidence that Shyamlal Rai was conscious and he stated that Sunny Rai has assaulted him in his house by a khukri and cut his left wrist and caused injury to his left chest and left shoulder. Doctor's evidence (P.W. 17) confirms that the patient Shyamlal Rai was conscious while he was taken to Mirik

B.P.H.C. There is nothing in the cross-examination of P.W. 20 to disbelieve the same. Later Shyamlal Rai died at N.B.M.C. & H. Therefore the statement of Shyamlal Rai is a dying declaration as per provision under section 32 of Indian Evidence Act.

P.W. 21 is Biren Rai. It is evident from his evidence that he and P.W. 20 Janaklal went to Mirik B.P.H.C. and on reaching there he saw Shyamlal Rai on the stretcher and his left hand from the wrist was completely amputated and had injury on his left chest and back and at that time Shyamlal Rai was conscious. P.W. 21 confirms the evidence of P.W. 20 and P.W. 17.

P.W. 22 is Rabin Rai. He has stated in his evidence that on 30th July, 2007 the wife of Shyamlal Rai came to the house of Kharka Daju and requested him for help to save her husband from the assault of the accused Sunny Rai. Kharka Daju was urged by P.W. 1 to come to her house and on reaching there, he found Shyamlal was boarded in a Maruti Van in a serious injured condition, his left hand was fully amputated and had sustained bleeding injury on his chest and the victim had bleeding injuries on his person. Balika and Anita Rai requested him to accompany them to Mirik

Health Centre and later Shyamlal Rai died on 31st July, 2007 in the evening

P.W. 23 is Jitendra Nath Roy. He has deposed before the court that S.I. Bhajan Sarkar held inquest over the amputated left hand over the wrist

and right little finger of the deceased Shyamlal Rai and he had signed on the inquest report. The signature of P.W. 23 on the inquest report was

marked as exhibit 12/1.

P.W. 24 is ASI Jainal Abedin. It is evident from his evidence that he is also a witness of the inquest of left hand palm and right little finger and his

signature on the inquest report is marked as exhibit 12/2.

P.W. 25 is Dr. Dibyakar Chettri who held the Post Mortem Examination over the dead body of Shyamlal Rai as per identification of Constable Tapan

Kr. Das and during post mortem examination he found several injuries on the person of Shyamlal Rai and according to his opinion, death was due to

the effect of injuries as mentioned in the post mortem examination report. On the same date Dr. Dibyakar Chettri conducted post mortem

examination over the left hand and right little finger.

P.W. 26 is S.I. B.C. Sarkar, the Investigating Officer of this case. He has stated in his evidence that during the investigation of this case he found

left hand and right little finger of the deceased at the residence of the victim Shyamlal Rai and he seized the same by proper seizure list in presence of

witnesses.

From the evidence on record it appears that the written complaint is not scribed by P.W. 1. P.W. 1, in her cross has stated that the written

complaint was not written by her and she failed to state the name of the person who wrote it. In my view, the principal object of F.I.R. is to set the

criminal law in motion from the point of view of the informant and to obtain information about the alleged crime. It is not a substantive piece of

evidence and it can be used only for the purpose of corroboration under section 157 of Indian Evidence Act or for contradiction under section 145 of

the Indian Evidence Act. Therefore such anomaly will not affect the prosecution case if it is otherwise established through the evidence of the

prosecution witnesses including P.W. 1.

From the evidence of P.W. 1, it is evident that while P.W. 1 and her husband were inside their house, accused Sunny Rai being armed with Khukri

came outside their house and called Shyamlal Rai, she came out of her house and asked Sunny Rai to go away and to pacify him called Bina Rai

(P.W. 2). Then she went to call Kharka Daju for help and on her returns he saw her husband Shyamlal Rai in the house of Puspa Lal Rai with injury

on his left chest and his left palm was chopped off.

P.W. 2 Bina Rai is not the eye-witness of the incident of assault upon the victim Shyamlal Rai.Â But she saw the accused Sunny Rai and heard him

shouting that he would kill Shyamlal Rai and she accompanied Vivek Rai to the courtyard of P.W. 1 to pacify Sunny Rai.Â The latter threatened to

assault her and on being frightened she left the place and later she heard a sound of commotion from inside the house of P.W. 1 and heard shouts of

Shyamlal Rai that Sunny Rai had chopped off his hand and saw Shyamlal Rai to go to the house of Puspa Lal Rai.Â P.W. 2 is the own aunt of

accused Sunny Rai and she deposed in this case against him.Â The defence gave her the suggestion that she depose in this case falsely out of enmity

towards her relation. P.W. 2 denied the same.Â Coming to her ocular version, it has been strongly argued that P.W. 2 ought not be relied upon as

there was an enmity between the parties.Â Her evidence is not only corroborated by the evidence of P.W. 1 and P.W. 4 but is clear and convincing

and she had remained unshaken in her cross-examination.

From the evidence of P.W. 3, it is established that after the incident of assault, Shyamlal Rai came to the house of P.W. 3 and she saw the injuries on

the person of Shyamlal Rai and Shyamlal Rai told her the name of the assailant as Sunny Rai. Shyamlal Rai later died at N.B.M.C. & H on the next

date of the incident as such the statement before P.W. 3 is his dying declaration.Â P.W. 3 corroborated that accused Sunny Rai chopped off the

hand of Shyamlal Rai and that Shyamlal Rai went to the house of Puspa Lal Rai (Husband of P.W. 3).

P.W. 5 is Sujan Rai, the daughter of P.W. 3.Â She is a child witness of 12 years and a student of Class VI.Â Before recording her evidence she

was asked some rational questions by the trial judge and when she answered them correctly, she was found to be competent to adduce evidence in

this case.Â It is evident from the evidence of P.W. 5 that while she was studying, the accused Shyamlal Rai entered into her room in injured condition

and Shyamlal Rai stated her that Sunny Rai assaulted him and cut his hand.Â

P.W. 5 has fully corroborated the evidence of P.W. 3, as regards the dying declaration made by the victim Shyamlal Rai.

P.W. 17 is Dr. Mahanada Sarkar attached to Mirik B.P.H.C., as on 30th July 2007 as Medical Officer. On that day at 8:30 P.M. one Shyamlal Rai

was brought by his relatives who was seriously injured by a sharp cutting weapon (Khukri). On examination he found (1) amputation of left hand

above wrist (2) amputation of right little finger and (3) deep cut injury in the anterior left chest wall measuring 10" X 3" the chest cavity (4) bone

deep cut injury at the right left arm (5) bone deep cut injury at ring finger and abrasions on left forearm. The cross-examination of P.W. 17 has

confirmed that the patient and the patient party gave the history of assault to him. P.W. 17 in his evidence confirmed that the name of the assailant

was disclosed to him. The statement given before doctor by the patient and the patient party was their first statement relating to the incident (even

prior to the registration of F.I.R.) and I do not find any ground to disbelieve the said evidence of P.W. 17 as he is an independent witness.

P.W. 25 is Dr. Dibyakar Chettri who held the post mortem examination over the dead body of Shyamlal Rai as per identification of Constable Tapan

Kr. Das and during post mortem examination he found several injuries on the person of Shyamlal Rai and according to his opinion, death was due to

the effects on injuries as mentioned in the post mortem examination report. On the same date, Dr. Dibyakar Chettri also conducted post mortem

examination over the left hand and right little finger of the deceased.

In the face of the cogent and consistent evidence of the eyewitnesses which is corroborated by the aforesaid medical evidence, I am of the opinion

that the prosecution has been able to prove its case beyond reasonable doubt and conviction and sentence of the appellant is thus upheld.

In view of the aforesaid discussion, the appeal is dismissed.

The period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentenced imposed upon

him in terms of section 428 of the Code of Criminal Procedure.

Copy of this judgment along with the lower court records be sent down to the Trial Court at once for necessary compliance.

Urgent Photostat certified copy of this judgment, if applied for, be furnished to the parties expeditiously.