
(2016) 03 CAL CK 0016
In the Calcutta High Court
Case No : C.R.A. No. 235 of 2015

Tapan Das and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360, Section 428
Penal Code, 1860 (IPC) — Section 308, Section 321, Section 323, Section 325, Section 34

Citation : (2016) 03 CAL CK 0016

Hon'ble Judges : Ishan Chandra Das, J.

Bench : Single Bench

Advocate : Rupam Mukhopadhyay and Surya Sarathi Basu, for the Appellant;
Manjit Singh, PP, Ayan Basu and Saryati Datta, for the Respondent

Final Decision : Partly Allowed

Judgement

Ishan Chandra Das, J.—1. This criminal appeal has been directed against the judgment and order of a conviction dated March 18, 2015 passed by the learned Sessions Judge, Fast Track Court-1, Krishnanagar in Sessions Case No. 71(12)/2006 wherein the learned trial court found the appellants guilty of the offence punishable under sections 325/34 IPC and 323/34 IPC and sentenced them to suffer imprisonment for one year and three years respectively and again to pay a fine of Rs. 1,000 and Rs. 2,000 each for both the offences, in default to suffer rigorous imprisonment for fifteen days and one month respectively.

2. Brief facts of this case is that on the 15th day of June 2006 at about 5.30 p.m. at village Mahakhola, P.S. Chapra, Nadia the appellants and another demanded a sum of Rs. 1,500 as subscription from the husband of one Renuka Biswas, de fact complainant, but when her husband expressed his inability to give such subscription, the appellants began to hit him all on a sudden with fists, blows and with belt causing severe bleeding injuries. One of them (i.e. accused Golak Bairagi) hit the victim, Sudhin Biswas, with iron rod causing serious injuries. The

local people like Nitish Sikdar, Fatik Sarkar and Gyanendra Nath Naskar of their village while rushed to the place of occurrence to save the victim, they were also beaten up by the appellants and another over the said incident. Stating the above noted allegations a written complaint was lodged before the officer in charge of Chapra police station with a request to take legal steps against the miscreants. Accordingly, Chapra P.S. Case No. 147 of 2006 dated June 16, 2006 was started; and on conclusion of investigation, the appellants herein were brought before the learned trial court to stand trial for committing the offence punishable under sections 325/34 IPC, 308/34 IPC and 323/34 IPC. The learned trial court on examination of twelve witnesses altogether found the appellants guilty of the offence punishable under sections 325/34 IPC and 323/34 IPC and convicted and sentenced them as noted earlier, though they were exonerated from the charge under sections 308/34 IPC.

3. Being aggrieved by and dissatisfied with the order of conviction passed by the learned court below, this appeal has been preferred mainly on the following grounds:--

"1) The learned trial court failed to appreciate the various infirmities in the prosecution case and disposed of resulting conviction of the appellants on the basis of surmise and conjecture.

2) The said judgment passed by the learned trial court has been vitiated by reason of non-consideration of the materials, elicited in the cross-examination.

3) The involvement of the appellants herein not being established beyond reasonable doubt, the conviction of the appellants is not sustainable in law.

4) Learned trial court found the appellants guilty of the offence as complained of on the strength of the evidence of "hearsay witnesses" without searching for any corroboration of the same.

5) The learned trial Judge failed to take into account the fact that the medical evidence did not support the version of the eyewitnesses.

6) The learned trial Judge has committed mistake in holding that the appellants assaulted the victim in furtherance of their common intention, though they were convicted accordingly.

7) The learned trial Judge caused miscarriage of justice by discarding the defence version that the so-called victim was a cattle smuggler and used to run "gambling boards" in the local market.

8) The learned court below did not consider the evidence of hostile witnesses, who, in a round about way, falsified the prosecution's case.

9) That the judgment and order of conviction passed by the learned trial court, not being based on sound reasoning, should be set aside resulting acquittal of the appellants, since the prosecution hopelessly failed to establish the allegations far to speak of beyond reasonable doubt."

4. Initially three persons - Rakesh Rai, Tapan Das and Golak Bairagi - were brought before learned trial court to stand trial. But in course of trial one of them, i.e. accused Golak Bairagi, absconded and the case was filed against him for the time being. Two other appellants who stood trial before the trial court were convicted and sentenced to suffer imprisonment and fine, as quoted earlier.

5. Now the point for consideration left before this court is whether learned trial court was justified in convicting the appellants herein and sentencing to suffer imprisonment and to pay a fine as noted above.

6. The de fact complainant, while examining herself as PW1, stated that on the date of incident (i.e. June 15, 2006) at about 5.30 p.m. the two appellants and one Golak Bairagi demanded a sum of 1,500 as subscription for organising a "sports meet" in the village and on being refused by the said victim to pay such subscription, they became furious and assaulted her husband. She claimed that she was not an ocular witness; but hearing the news of beating on her husband, she rushed to the place of occurrence and found him with bleeding coming out of his nose, mouth and he was lying senseless. From the statement of the PW1 it also transpired that she came to know from the persons present at the place of such occurrence namely Fatik, Ashoke and Nitish Sikdar that one of the appellants, Tapan, assaulted her husband with belt, Rakesh assaulted with fists and blows and Golak assaulted him with "Sabal" (an iron rod) on his head. Immediately thereafter, the de facto complainant with the assistance of Fatik and Nitish took the victim to Krishnaganj hospital for medical aid.

7. In this context, the evidence of Dr. Joydip Roy (PW8), the attending doctor, should be looked into with proper circumspection. He stated that Sudhin Biswas, the victim, aged about thirty years was admitted to the Krishnanagar District Hospital via Chapra Rural Hospital on June 15, 2006 at about 11 p.m. with the history of physical assault and on examination he found the patient conscious with tenderness over the nasal bridge and left parietal region of scalp. He also stated that there was a question mark (?) in the report in respect of the head injury of the victim and the patient was treated accordingly. But he was discharged on June 18, 2006. It is also elicited from his evidence that the CT Scan of brain of the patient was advised, but in the report of the CT Scan, no abnormality was detected. The patient was given proper treatment and was discharged after three days from the date of his admission/incident. The medical report and the other allied documents (Ext. 2 series) coupled with the oral testimony of the medical officer (PW8) clearly pointed out that the victim suffered injuries by physical assault with head injury and the nasal injury on the date of the incident and he was treated at the District Hospital, Nadia. Such injury report and the allied treatment papers clearly and unmistakably pointed out that the victim was assaulted over the incident and the trend of cross-examination of the said witness suggested that such injuries were likely to be caused if one is hit with belt, fists and blows and hit by any hard substance. If the nature of injuries is considered, taking into account the statement of the wife

of the victim given in the written complaint, a proximate connection between the two - i.e. the history of assault and the nature of injuries - is clearly established.

8. So far as the involvement of the appellants with the alleged offence was concerned, the statement of the victim (PW3) should be scrutinized with due care and caution. The victim (PW3) while narrating the incident stated on solemn affirmation that on the date of the incident at about 5 p.m. none but these appellants, Tapan, Rakesh, and one Golak (against whom the case has been filed for the present) hit the victim while he expressed his inability to give the demanded subscription to which Rakesh delivered a blow on his nose and face and accused Tapan hit him with a belt. Such statement of the victim finds corroboration in the statement of the local witnesses like Fatik Srdar (PW2), Gyanendra Nath Naskar (PW4) and Ashoke Sarkar (PW6) against whom no inimical relation with the appellants were established in their cross-examination. In this context, it would be relevant to mention here that the prosecution examined on Samar Biswas (PW5) to establish that he was the scribe of the written complaint (Ext. 1).

9. Learned counsel appearing for the appellants in course of the argument drew my attention to the oral testimony of the witnesses - Asit Kumar Bairagi (PW10) and Nitish Sikdar (PW11), who turned hostile to the case of the prosecution. They stated with reference to their cross-examination that the victim used to control gambling board in the local market at Mahakholahat, and that there was a tussle between the two groups, one led by the victim and the other persons of the locality who tried to eliminate him by resisting him from doing the business of gambling and cattle smuggling.

10. Relying on a decision of the Hon^{ble} Supreme Court in C. Muniapappa & Ors. v. State of Tamil Nadu with D.K. Rajendrandan & Ors. v. State of Tamil Nadu reported in , AIR 2010 SC 3718 (relevant page 3736), learned counsel for the appellants pointed out that the evidence of the hostile witnesses cannot be discarded as a whole and the relevant parts thereof which are sustainable in law can be used by the prosecution or the defence, as the case may be. He also pointed out that the learned trial court held the appellants guilty of the offence punishable under sections 323/325/34 IPC without taking into consideration the statements given by the witnesses in their cross-examination (particularly the hostile witnesses PW10 and PW11) and came to the conclusion that the appellants committed the offences as complained of, which are not sustainable in law.

11. Learned advocate appearing for the State has expressed a contrary view in the matter. He confidently submitted that the alleged offences took place on June 15, 2006 where the victim sustained injuries on his person and he was treated at the hospital where he had to undergo treatment for three days and he was released therefrom on June 18, 2006. Drawing my attention to the oral testimony of the local independent witnesses (PWs 2, 4 and 6) he pointed out that these three witnesses corroborated the statement of the victim and the

evidence of all the witnesses clearly pointed out the fact that "extortion of money" was the reason behind the crime on the plea that the victim was engaged in committing the offence of gambling and cattle smuggling. Had that been so, the appellants should not have taken course of law in their own hands. It is already discussed that a close proximity between the injuries of the victim and the cause of such injuries has been established beyond doubt and taking into consideration this aspect the learned trial court found the appellants guilty of the offence of voluntarily causing hurt and grievous hurt in furtherance of their common intention punishable under sections 323/325/34 IPC.

12. The learned trial court in the impugned judgment held that the appellants never committed the offence of attempting to commit culpable homicide not amounting to murder, punishable under section 308 IPC, but at the same time it cannot be said that the injury sustained by the victim were grievous in nature resulting exoneration of the appellants from the offence punishable under section 308 IPC.

13. It is already discussed that the learned trial court rightly held that the victim sustained injuries at the behest of the present appellants and the nature of injury, as it is reflected from the report, was not being a grievous one, the appellants cannot be held guilty of the offence punishable under section 325 IPC.

14. Having regard to the facts of the case I firmly conclude that the learned trial court was not justified in holding the appellants guilty of the offence punishable under sections 325/34 IPC and such finding of the learned trial court coupled with the order of conviction passed against the appellants for the offence punishable under sections 325/34 IPC is liable to be set aside.

15. It was observed in the earlier part of the judgment that none but the appellants voluntarily caused hurt to the victim, Sudhin Biswas, on the 15th day of June 2006, and that he sustained injuries were not grievous in nature. Hence it can safely be concluded that they committed the offence of voluntarily causing hurt to the victim within the meaning of section 321 IPC and punishable under section 323 IPC, in furtherance of their common intention and their conviction for such offence by the learned trial court should not be interfered with in the present appeal.

16. So far as the punishment imposed upon the appellants for the said offence is concerned, the learned trial court imposed sentence to suffer rigorous imprisonment for one year and to pay a fine of Rs. 1,000 each, in default to suffer further rigorous imprisonment for fifteen days subject to set off in terms of section 428 Cr.P.C. While dealing with the instant case the learned trial court held that as per its opinion it was not a fit case for extending the benefit of section 360 Cr.P.C. or any of the provisions of the Probation of Offenders Act, 1958. But in my considered opinion since no criminal background of the appellants has been shown, their case should not be harshly dealt with, but at the same time if any lenient view is taken for imposing proper punishment, a wrong message will

reach the society that no punishment is presented for such offence. Hence, taking into consideration the gravity of the offence, the manner in which it was committed, I am of the opinion that imposing fine of a sum of Rs. 1,000/- upon both the appellants, instead of asking them to suffer imprisonment, would be appropriate to meet the ends of justice.

17. The appeal is thus allowed in part. The order of conviction passed by the learned trial court stands modified to the extent as indicated above. The appellants are directed to surrender before learned trial court and to pay a fine of Rs. 1,000/- each, in default to suffer simple imprisonment for two months. Their bail bonds in connection with this appeal stand cancelled and they are directed to surrender before learned trial court within one month from the date of this order and to pay the fine or to suffer imprisonment, as directed hereinbefore.

18. Let a copy of this judgment be sent to the learned trial court along with the LCRs immediately.

19. Certified photostat copy of this judgment, if applied for, shall be given to the parties.