Rabin Bauri Vs State

Criminal Appeal No. 254 of 1981

Court: Calcutta High Court

Date of Decision: Sept. 18, 1989

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 114, 300, 302, 304

Citation: 94 CWN 608

Hon'ble Judges: S.P. Rajkhowa, J; Monoj K. Mukherjee, J

Bench: Division Bench

Advocate: Sasanka Ghosh, for the Appellant; B.N. Das, for the Respondent

Judgement

Siba Prasad Rajkhowa, J.
The appellant who was accused of committing the offence of culpable homicide amounting to murder, stood his

trial u/s 302 of the India Penal Code in Sessions Case No. 71 of 1979 corresponding to Sessions Trial No. 45 of 1980 in the court of Additional

Sessions Judges, Asansol. Sri D. K. Chakraborty Additional Sessions Judge who held the trial, found the accused guilty as charged and by the

impugned judgment and order dated 22/12/1980 sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default

to undergo further rigorous imprisonment for 6 months. The appellant"s father Rampada Bauri was the co-accused in the said trial who was

charged u/s 302/114 of the Indian Penal Code. The learned Additional Sessions Judge acquitted him.

2. The prosecution case in brief is that there is a place in village Palashdiha under Asansol Police Station for the worship of Goddess Manasha by

the local Bauri community and it is commonly known as Manasha-Sthan. There is a temple of the deity with brick wall without any roof thereon.

Besides the worship of Goddess Manasha, Astaprahar Sankirtan used to be performed during the month of Baisakh at that place. On such

occasions, people raised temporary structure made of bamboo. Date-leaves were spread on it to make it a temporary shade. On 15/5/1978

deceased Moriram Bauri along with other villagers were raising such a temporary structure in order to facilitate them to perform Astaprahar

Sankirtan. Accused Rampada Bauri (since acquitted) came there and protested about the making of such arrangements. An altercation ensued

between deceased Moriram Bauri and Rampada Bauri. As a result of this altercation, further work of the placing of the shade had to be

discontinued. In the midst of the altercations, accused Rabin Bauri (appellant before us), son of Rampada Bauri, armed with a Tangi (a chopper

used for sacrificing goat at the altar) came to the place all on a sudden and struck the left side of the waist of the deceased Moriram Bauri from

behind with that Tangi and thereafter fled with the said weapon towards Roypara. The blow with that Tangi proved fatal and Moriram Bauri met

with instantaneous death. Information being lodged, police registered a case and investigated the occurrence, arrested accused persons and after

due investigation submitted charge sheet against both Rampada Bauri and his son Rabin Bauri. In order to bring home the Charges, prosecution

examined as many as 15 witnesses including the Investigating Officers and the doctor who held the post mortem examination over the dead body

of the deceased. The defence took various pleas and was shifting the grounds to counter the assault mounted by the prosecution. At the beginning

of the trial, the defence vaguely tried to set up the plea of alibi in respect of accused Rabin Bauri. As the trial progressed, it was apparent that this

plea would be of no avail. So defence took the specific plea of right of private defence of person as well as property during the cross-examinations

of the prosecution witnesses. This plea of right of private defence of person and property was renewed at the time of examination of the accused

u/s 813 of the Code of Criminal Procedure. Defence also tried to discharge its burden by examining 2 doctors and by producing certain

documents relating to the land in which the occurrence took place. Thus, by adducing evidence, defence sought to establish that the land in which

the occurrence took place belonged to Rampada Bauri, father of the accused appellant and that the accused had been assaulted first by the

members of the prosecution and so Rabin Bauri had to strike in self-defence. However, none of the defence pleas impressed the learned

Additional Sessions Judge and were discarded by him. The trial ended in the acquittal of Rampada Bauri and in conviction of Rabin Bauri as stated

above.

3. We have perused and weighed the evidence on record adduced by both sides. We find the prosecution evidence unassailable in so far as it goes

to show that the accused gave the fatal blow on the deceased with the Tangi, material Ext. 1. Confusion was sought to be created as to the

terminology of the weapon used in the commission of this ghastly murder. Defence could not derive any benefit out of this confusion. Pointing to

material Ext. 1, P.W.1., Tunu Bauri, son of the deceased has stated in his cross-examination that this weapon is known to him as Tangi for

slaughtering goats. It is quite possible that such a weapon would be available in the house of Rampada Bauri who is admittedly a worshipper of

Goddess Manasha. The unimpeachable prosecution evidence before us that accused Rabin came to the spot with the Tangi and clasping the

handle with both hands dealt a mighty blow on the left side of the back of the deceased from behind thereby causing a gaping wound measuring

8""x3"" deep into the peritonial cavity as found by P.W.15, Dr. Kamal Kumar Das who held the autopsy on the dead body of the deceased. The

single blow inflicted by accused Rabin was so mighty that it caused fracture of Lumbar no. 1 vertibra and ruptured the aorta, left and right kidneys.

That single stroke proved fatal. The wound bled profusely. The deceased advanced a few paces and then slumped down dead. Accused Rabin

then ran away with the Tangi and threw the same into a bush, subsequently recovered by the Investigating Officer (P.W. 14) under a seizure memo

(Ect.3/3). Being attracted by the hue and cry, the wife of the deceased, Smt. Anna Bauri (P.W.9), came to the scene only to find her husband

snatched away from her by the cruel fate. She rolled down on the dead and wailed at the calamity that befell her and her family. What a cruel fate.

The weapon which was used to sacrifice goats at the altar of the Goddess Manasha was used, by the turn of events, to sacrifice a human being. It

is seen that P.W.1 Tunu Bauri, P.W. 5, Chitta Bauri, and P.W. 11 Dulal Bauri who are the eye witnesses are the sons of the deceased and P.W. 9

Anna Bauri is the wife of the deceased. We have given our anxious consideration on the evidence tendered by them as they are relations of the

deceased. We are satisfied that the filial love on the part of P.W.1, P.W. 5 and P.W. 11 and conjugal love on the part of P. W. 9 for the deceased

have not blurred their visions to falsely implicate the accused in the commission of the heinous crime of the murder of the deceased. Their ocular

version of the occurrence finds full corroboration in the evidence of the independent witnesses like P.W.7. Sunkar Bauri and P.W. 12, Burgapada

Bauri. P. W. 10, Billya Mongal Pal and P. W. 13, Mantu Bauri although not eye witnesses, have deposed to the facts and circumstances close on

the heels of the crime which lends sufficient credence to the evidence tendered by the prosecution witnesses related to the deceased. Prosecution

has Unfailingly hooked accused Rabin Bauri who has no escape route left.

4. This brings as to the question as to whether there be any right of private defence of person and property. According to the learned trial Judge,

there is none. P.W. 1 has deposed that the manasha Sthan was a place of assemblage of the whole members of the village in connection with the

Puja of Goddess M Apart from Manasha Puja. Astaprahar Kirtan during the month of Baishakh was also performed. He has stated in his cross-

examination that the land of Manasha Sthan belonged to a certain Roy Babu and that Ramapada Bauri used to perform the Puja of the Goddess

Manasha personally it was intended by the defence to eficit from this witness a favourable statement that the temple land was covered by Khatian

No. 39 belonging to Roy Babu who settled the same with Rampada Bauri and thus Rampada Bauri has dominion over that land. But defence failed

in this attempt. Defence produced some papers in support of its contention that the land belonged to Rampada Bauri. But the trial court held that

these papers did not prove any right of title of Rampada Bauri. P.W. 5 Bhanu Deb Roy has stated that the temple at the Manasha Sthan belonged

to the public of village Roypura, but that Rampada Bauri alone used to perform the Puja of the deity P.W.9, Anna Bauri has stated in her cross-

examination that Rampada Bauri used to perform the Puja of Goddess Manasha on behalf of the entire local people. Similarly, P.W.11, Dulal

Bauri has stated in his cross-examination that nobody in their village had any individual interest in the land of the temple. The evidence as discussed

above gives us the impression that Rampada Bauri by performing the Puja annually had tried to assert his dominion over the land to the exclusion

of the local people and felt the holding of Astaprahar Kirtan by the public as a challenge to his supposed right. But that being not the case we hold

that there was no right of private defence of property to be exercised by the accused.

5. This brings us to the crucial question as to whether the accused had acted in self-defence of his person. In support of this plea, defence

examined 2 witnesses namely Dr. Anita Sen (D.W.1) and Dr. K. K. Dawn (D.W.2). Dr. Sen deposed that on 15/5/78 at S. D. Hospital, Asansol

she examined Rampada Bauri and found one lacerated wound 1""x 1/2"" into scalp over right side of the frontal region. The injury was fresh and

simple and caused by blunt weapon. On the same day she also examined Aduri Bauri, daughter of Ramdapa Bauri. There was no external injury

on her person. But she complained of pain over her dead. On the same day she also examined Dulali Bauri, daughter of Rampada Bauri and found

swelling below the left eye lid. There was no other external injury. The swelling could be caused by fist and blows. On the same day she also

examined Rabin Bauri and found the following :- (1) Lacerated wound 31/2""x1"" into scalp over left parietal region with swelling around the wound.

(2) Swelling with tenderness over left supra clavicular region. There was profuse bleeding from the scalp wound. In her opinion, there injuries could

be caused by blunt weapon. She advised transfusion of blood for this patient. D.W.2 has stated that on 16/5/78 he examined Rabin Bauri as

referred by Dr. Anita Sen and deposed as follows:-""The injury of the patient was stitched in the emergency before examination by me. Transfusion

of blood to the patient was already done. The patient was discharged from the hospital on 24/6/78. The mark of healed up injury, on the head of

this accused (Rabin Bauri) corresponds to the injury found by me on the head of the patient of Rabin Bauri. The injury found on the head of the

patient Rabin Bauri could not be self-inflicted or can not be caused by friendly hands."" The defence wants to explain the injuries on the members of

the family of Rampada Bauri by saying that in the midst of altercation, at the place of occurance, the members of the family of the deceased

Moriram Bauri assaulted them with lathis and axe. We have given our anxious though to this defence version. It was the duty of the prosecution to

explain the injuries on the accused. But there is no explanation. The prosecution witnesses are totally silent regarding their participation in any

assault. Be that as it may, we are convinced that the accused sustained the injuries at the place of occurrence. We find from the evidence of the

Investigating Officer (P.W. 14) that on 15/5/78 a cross case filed by the accused against Moriram and others was registered, being Asansol P. S.

Case No. 4 5 dated 15/5/78. This witness arrested Rampada Bauri and Rabin Bauri from S. D. Hospital, Asansol. He noticed bandaged injury on

the head of Rampada and Rabin. Before discharge from hospital, Rabin was in the hospital as an indoor patient. There is no clear evidence on

record that the members of the prosecution took any aggressive part. But from the evidence on record we have seen that the deceased had been

without any weapon at the place of occurance. From the cross-examination of P.W.5, Chitta Bauri we find that during the altercation, accused

Rabin Bauri came to the place of occurance and stayed for about 3 minutes and then left for his house and came to the place of occurrance with

the Tangi. Rabin had no weapon with him when he came on the first occasion. From the evidence on record we can clearly visualise that accused

Rabin had received the blows in the midst of altercation when he came there and left for home and returned with the Tangi by which he inflicted the

fatal blow on the deceased who was without any arms. The conduct of the accused Rabin shows that the right of private defence of person no

longer existed as soon as he left the place of occurance for his house.

6. From our discussions we find that the plea of the accused exercising the right of private defence of property and person cannot be sustained.

But from the entire evidence on record as discussed by us in the preceeding paragraphs we find that accused Rabin had caused the death of the

deceased, whilst deprived of the power of the self-control by grave and sudden provocation. That provocation emanates from the fact that his near

relations including his father and himself had been assaulted Under the facts and circumstances of the case, in our considered view, Exception I u/s

300 I.P.C. is attracted and the of fence committed by accused Rabin Bauri comes down u/s 304 Part I of the Indian Penal Code.

7. In the result, the appeal is partly allowed. We hold accused Rabin (appellant) guilty u/s 304 Part 1 of the Indian Penal Code and sentence him to

suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 3,000/-, in default, to undergo further rigorous imprisonment for 3 years. The

amount of fine, if realised, shall be paid to the wife of the deceased (P.W. 9) as compensation. The appellant shall be entitled to set-off as per law.

Monoj Kumar Mukherjee, J.

I agree.