

## **Dibakar Singh and Another Vs The State of West Bengal**

**Court:** Calcutta High Court

**Date of Decision:** Dec. 16, 2010

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 161, 313  
 Penal Code, 1860 (IPC) â€” Section 148, 149, 304, 323, 326

**Citation:** (2010) 4 CALLT 516

**Hon'ble Judges:** Raghunath Bhattacharya, J; Kalidas Mukherjee, J

**Bench:** Division Bench

**Advocate:** Pradip Kumar Roy, for the Appellant; Swapan Mallick, for the Respondent

**Final Decision:** Allowed

### **Judgement**

Kalidas Mukherjee, J.

This appeal is directed against the judgment of conviction and sentence passed by learned Additional Sessions

Judge, 1st Court, Midnapore in Sessions Trial Case No. XXIV of December, 1992 arising out of G.R. Case No. 242 of 1990 convicting the

appellants u/s 304 Part-II read with Section 149 of the Indian Penal Code, sentencing the Appellant No. 1 Gurucharan Singh to suffer RI for 10

years and Appellant No. 2 Dibakar Singh to suffer RI for 4 years and also to pay a fine of Rs. 500/- each in default to suffer R.I. for 3 months

each u/s 323 read with Section 149 of the Indian Penal Code.

2. The prosecution case, in short, is that one Satyaban Singh lodged complaint with the O.C., Lalgarh P.S. alleging that on 27.5.1990 at about

12.30 P.M. the goat of his elder brother Jugal Singh suddenly started eating the boiled rice of Gurucharan Singh in his courtyard. The wife of

Gurucharan Singh abused the informant and started quarrelling with him. The informant and his elder brother Jugal Singh told her not to abuse, but,

to impound the goat. Gurucharan Singh and his elder brother Dibakar Singh being armed with tabla, bow, arrows and iron rod attacked the

informant and his men. Gurucharan Singh with the help of tabla assaulted Aijun Singh on his head. Others being armed with iron rod assaulted the

informant and his wife on the head and caused bleeding injury. The accused persons also assaulted and caused injury to Jugal Singh and Methar

Singh. Methar Singh sustained bleeding injury on the head. Jugal Singh sustained severe bleeding injury in his waist. Dibakar Singh with the help of

axe assaulted Jugal Singh in his waist causing severe injury. Arjun Singh having sustained injury on his head fell down on the ground. Arjun Singh

was taken to the hospital, but, before reaching the hospital he succumbed to the injury.

3. After completion of investigation, the charge sheet was submitted. The learned Trial Judge framed charges u/s 148, 304 part-I read with Section

149 and Section 326 read with Section 149 Indian Penal Code. The Appellants pleaded not guilty to the charges and claimed to be tried.

4. The learned Judge upon consideration of the materials on record was pleased to convict the Appellants and passed the sentence as stated

above holding that Gurucharan Singh was very much present at the place of occurrence as per point No. "A" of the sketch map as stated by the

I.O. It was observed by the learned Judge that the non-seizure of the blood stained earth and garments might be a defect on the part of the I.O. of

this case, but, the prosecution case would not suffer for such laches on the part of the I.O. The learned Judge has held that Gurucharan Singh

assaulted Arjun Singh on his head with a tabla (axe) causing injury and, as a result, Arjun Singh succumbed to the injury. The learned Judge has

further observed that from the evidence of P.W. 1 to P.W.4 it would appear that the proximate cause of death of victim Arjun Singh was his head

injury which was caused by accused Gurucharan Singh. It has been held by the learned Judge that from the evidence of P.W. 1 to P.W.4 it was

proved beyond reasonable doubt that all the accused persons had knowledge that the injuries which they caused to the victim Arjun Singh might

cause his death and with that knowledge they assaulted Arjun Singh. Being aggrieved by the said judgment of conviction and sentence passed by

the learned Trial Judge, the two Appellants Gurucharan Singh and Dibakar Singh have preferred the instant appeal.

5. Mr. Pradip Kumar Ray, the learned Advocate appearing on behalf of the Appellants submits that the oral testimony of the P. Ws did not find

corroboration from the evidence of the autopsy surgeon. It is contended that all the four P. Ws. were near relatives and it was admitted by the P.

Ws that Arjun Singh was working in the house of Bankim Mondal at the material time. It is submitted that Arjun Singh was not present at the time

and place of the alleged occurrence and it finds corroboration from the evidence of the P. Ws. It is contended that the learned Trial Judge wrongly

placed the onus upon the Appellants to prove it beyond reasonable doubt.

6. Mr. Roy submits that there is contradiction in the version of the witnesses as to the infliction of assault upon Arjun Singh and the names of the

assailants. Mr. Roy submits that the defence version finds corroboration from the evidence of P.W.6 Aswini Patra, a local witness, who was not

declared hostile by the prosecution. It is submitted that truth came out from the mouth of P.W.6 Aswani Patra.

7. Mr. Roy submits that there is no injury report so far as the injuries of Methar Singh and Jugal Singh u/s 326 of the Indian Penal Code are

concerned. Mr. Roy submits that there are discrepancies as to the alleged abusive language uttered by the wife of the Appellant Gurucharan Singh.

It is submitted that the seized weapons were not stained with blood and the weapons which were produced at the time of trial, were completely

different from the seized weapons and the learned Judge also held that the seized weapons were not the offending weapons. As regards the charge

u/s 148 Indian Penal Code, Mr. Roy submits that there is no evidence that all the accused persons came in a group. It is contended that there is no

note as to the history of assault in the report of the Doctor regarding the names of the assailants.

8. Mr. Roy submits that as per the evidence of the Doctor the injury was by the side of the ear, but, the witnesses said that assailants assaulted

Arjun Singh on the forehead and in the private parts. Mr. Roy submits that there are severe contradictions with the earlier statements u/s 161 Cr

PC as taken by the defence in the cross-examination of the I.O. Mr. Roy submits that the learned Trial Judge could not examine the accused

persons u/s 313 of Cr PC properly and some misleading questions, namely the assault by Gurucharan Singh upon the private parts/penis of Arjun

Singh was stated by the learned Judge to the accused Gurucharan Singh in the question No. 2. Mr. Roy in this connection has referred to and cited

the decisions reported in (2009) 2 SCC 243 (State of Punjab v. Hari Singh and others) and Lakshmanan Vs. State, Mr. Roy submits that the

learned Trial Judge was not justified in convicting the Appellants and passing the sentence as stated.

9. Mr. Mallick appearing on behalf of the State submits that the prosecution case rests on the evidence of P.W. 1 to P.W.4. P.W. 10 and P.W.

11. As regards the evidence of P.W. 6 Aswini Patra Mr. Mallick submits that Aswini Patra was a mere seizure witness. Mr. Mallick submits that

the particulars of the assault dealt by the accused persons upon Arjun Singh and other injured persons have been specifically stated in the FIR. Mr.

Mallick submits that according to the prosecution case as set forth in the FIR. Gurucharan Singh assaulted Arjun Singh and there cannot be more

than one injury as alleged in the FIR. Mr. Mallick further submits that the blood stained earth has not been examined which is a defect in the

prosecution case, but, the prosecution case has otherwise been proved. So far as the evidence of P.W.2 and P.W.4 are concerned, Mr. Mallick

submits that it would appear from their evidence that Dibakar and Gurucharan assaulted Arjun Singh, but, in the FIR it has been specifically stated

that Gurucharan only assaulted Arjun Singh. Mr. Mallick submits that the inclusion of the name of Dibakar so far as the assault upon Arjun Singh is

concerned, it might be a subsequent development, but, the name of Gurucharan Singh having assaulted Arjun Singh on the head, has been

specifically stated in the FIR and subsequently corroborated by the P. Ws.

10. As regards the defence plea that Arjun Singh was not present at the time and place of occurrence and that Gurucharan Singh was a T.B.

patient, Mr. Mallick submits that when the defence takes the plea of alibi, the onus lies upon the defence to prove it, but, there is no evidence to

prove such contention. As regards the examination of accused u/s 313 Cr PC, Mr. Mallick submits that in question No. 2 the assault inflicted by

Gurucharan Singh was stated by the learned Judge to accused Gurucharan Singh which is consistent with the prosecution case as set forth in the

FIR and the evidence of the P. Ws. Mr. Mallick submits that the assault inflicted by Gurucharan Singh upon the deceased Arjun Singh has been

proved by the prosecution and so far as this part of findings of the learned Trial Judge resulting in the conviction and sentence of Appellant

Gurucharan Singh is concerned, there is no ground to interfere with the impugned judgment.

11. As regards the assault upon Arjun Singh, it, is the specific case of the prosecution as set forth in the FIR that Gurucharan Singh assaulted Arjun

Singh with the help of tabla on the head and, as a result, he succumbed to the injuries. But P.W.1 who lodged the FIR has stated in his cross-

examination that Gurucharan Singh hit Arjun Singh on the forehead with a tabla from front side; all the accused persons hit him four times; they hit

Arjun on his head and on the private parts; Kush Singh assaulted him with lathi from the front side, and as a result of the injuries caused by the

accused, the wearing apparels of the Arjun singh were stained with blood.

12. P.W.2 Methor Singh has stated that Gurucharan Singh and Dibakar Singh also caused severe injuries to Arjun Singh with axe on his head and

with iron rod on his private parts. In the cross examination he has stated that Dibakar Singh and Gurucharan Singh hit Arjun Singh by axe and iron

road face to face. It is also in the evidence of P.W.2 that they belonged to the C.P.I.(M) party and the accused persons belonged to the Congress

party. He has, however, denied that they have implicated the accused persons in a false case clue to political rivalry.

13. P.W.3 Smt. Lakshmi Singh, the wife of P.W. 1 has stated that Gurucharan Singh attacked Arjun Singh with labia on his head and he died.

14. P.W.3 did not state about the assault by the Gurucharan and others upon the private parts of Arjun Singh.

15. P.W.4 Jugal Singh, one of the injured persons, stated that Gurucharan Singh hit Arjun Singh on his head and Dibakar Singh hit Arjun Singh

with an iron rod on his private parts. In the cross-examination he has stated that Arjun Singh sustained severe bleeding injury due to the attack in

his private parts by Dibakar with an iron rod.

16. P.W. 6 witnessed the seizure. He has stated in cross-examination that Satyaban Singh (P.W.1) gives tuition to the student and he did not see

Satyaban Singh at the place of occurrence on that date. P.W.6 has further stated in cross-examination that he did not see Gurucharan Singh in his

village for about 4-5 years. He has stated that Lakshmi Singh, wife of Satyaban Singh, was a candidate in the Panchayat Election from the

Congress-Jharkhand alliance.

17. From the evidence of the P.Ws. as discussed above, it is clear that there is no allegation in the FIR about the assault inflicted by the accused

persons except Gurucharan Singh upon Arjun Singh. It is the specific case of the prosecution that Gurucharan Singh only assaulted Arjun Singh on

the forehead. But the P. Ws. have stated that Dibakar Singh and other accused persons attacked and inflicted assault upon Arjun Singh. It is in the

evidence of the P. Ws. that Arjun Singh was assaulted by the Dibakar Singh in the private parts with an iron rod. But, the Doctor (P.W. 10) has

stated that he held post mortem examination over the dead body of Arjun Singh and found the following injuries:

1. One incised looking wound, measuring 3"  $\times$   $\frac{1}{2}$ "  $\times$   $\frac{1}{4}$ " from vertex, obliquely downwards towards the left ear. The parietal bone

underneath the wound appears to be intact.

2. Blood-stained froth emerging from the mouth and nostril.

On dissection I found bruise mark by the side of the injury No. 1. Blood and clotted blood were present in the left side of the brain.

Death, in my opinion, was due to shock and haemorrhage following the above mentioned injuries, which were ante mortem and homicidal in

nature. The injury No. 1 is possible by heavy sharp cutting weapon, like tabla, which is a thick axe type instrument.

18. In the cross-examination he has stated that except the injuries as stated above there were no other injuries on the dead body. He has also

stated that if anybody while rising(sic) up collides with a projected tin chala, then injury No. 1 would be possible and in that case the size and

shape of the injury might differ. It is also in his evidence that if anybody falls on any iron peg, meant for fastening a cattle, then he might sustain

injury like injury No. 1; the skull of the victim was intact.

19. From the evidence of the Doctor it is clear that there; was injury in the region of the left ear. The Doctor did not find any injury on the private

parts of Arjun Singh. So we find that there is grave discrepancy as to the manner of assault inflicted upon Arjun Singh and the ocular version of

assault upon the private parts of Arjun Singh does not find corroboration from the medical evidence.

20. From the evidence of the P. Ws it is clear that there was political rivalry between the parties. As regards the seizure, P.W.7 is the Police

Officer who has stated in cross-examination that Lalgah P.S. Case No. 29 of 1990 has been stated in the slip attached with the weapons. But the

instant case relates to Lalgah P.S. Case No. 32 of 1990 as stated by the I.O. (P.W.9). It is, therefore, evident that the articles produced before

the learned Court below at the time of trial were the properties of a different case. The learned Trial Judge also held that the articles produced did

not relate to this case. The non-production of the seized articles being the offending weapons and the production of articles of a different case raise

grave doubt as to the veracity of the prosecution case.

21. It is the contention of the defence as appearing from the cross-examination of the P. Ws that the accused Gurucharan Singh was a T.B. patient

and on the date of occurrence Arjun Singh went to work in the house of Bankim Mondal. It is the further contention of the defence that Arjun

Singh while working in the house of Bankim Mondal sustained injury, as a result of which he died. P.W.1 Satyaban Singh has stated in his cross-

examination that Arjun Singh used to work as a day labourer in the house of Bankim Mondal and on the date of incident he went to work in the

house of Bankim Mondal.

22. P.W.4 has stated in his cross-examination that he knows Bankim Mondal and on the date of incident Arjun Singh went to the house of Bankim

Mondal for work. P.W. 1 has stated in his cross examination that Gurucharan Singh is married at village Satbankura, but, he is not residing there;

Gurucharan Singh has been suffering from T.B.; about five years ago he was residing at his father-in-law's house for about 1 1/2 months.

23. It is evident from the testimony of the P. Ws that the deceased Arjun Singh used to work in the house of Bankim Mondal and on the date of

incident he went to work at the house of Bankim Mondal as stated by P.W.1. So this aspect of the plea of defence that Arjun Singh on the date of

incident went to the house of Bankim Mondal for work and that Appellant Gurucharan Singh being a T.B. patient used to reside in his father-in-

law's house becomes an admitted fact as appearing from the evidence of the P. Ws. The learned Trial Judge went on a wrong footing and held

that the defence hopelessly failed to discharge its onus to prove the defence story regarding the entire occurrence. The learned Judge held that

there was no evidence from the side of the defence on the point that the victim Arjun Singh might have sustained injuries by collision with a

projected corrugated iron sheet while working in the house of Bankim Mondal. The learned Judge observed that neither the I.O. nor the P.W. 1 to

P.W. 4 had any opportunity to see the seized weapons and their opinion whether those were used during the occurrence could not be sought for.

The learned Judge thus held that the defence argument in this respect was very much logical.

24. As regards the point of suffering from T.B. by accused Gurucharan Singh the learned Trial Judge has held that during the Trial of this case from

01.3.1995 to 03.3.1995 he had the opportunity to personally see the accused Gurucharan Singh, aged about 35 years, in his Court, but, from his

physical appearance this accused never appeared to be so sick or to be weak that he could not commit any offence as alleged by the prosecution,

rather accused Gurucharan Singh appeared to him as able bodied man who could lead a normal life in ordinary circumstances. The learned Judge

thus rejected this contention raised by the defence. We are of the considered view that in view of the specific evidence of the P. Ws, the learned

Trial Judge ought not to have recorded his personal observation as to the contention raised by the defence in this regard.

25. We are of the considered view that when the defence raises certain points as regards the improbability of the prosecution case assailing

thereby its veracity, it is not for the defence to prove beyond reasonable doubt having onus upon it to prove such points. It is sufficient if the

defence succeeds in eliciting points from the cross-examination of the P. Ws that the incident might have happened in any way other than the

manner as alleged by the prosecution. The learned Judge in this respect proceeded to consider these points from a wrong angle of vision and

wrongly placed the onus upon the defence to prove such points. The onus is upon the prosecution to prove the prosecution case in the manner as

alleged. But, from the evidence as discussed above, we find that there are severe discrepancies in the evidence of the P. Ws, a sharp departure

from the prosecution case as set-forth in the FIR, and the ocular version being different from medical evidence, all these raise strong suspicion

about the veracity of the prosecution case.

26. Having heard the learned Counsel for the parties and upon consideration of the materials on record, we are of the considered view that the

prosecution could not prove beyond reasonable doubt that these two Appellants dealt blows upon Arjun Singh causing his death. These two

Appellants are found not guilty of the charges levelled against them. The impugned judgment so far as these two Appellants is concerned with their

conviction and sentence is hereby set aside. The Appellants Gurucharan Singh and Dibakar Singh are acquitted of the charges. The appeal is

allowed.

27. Let a copy of this judgment along with the LCR be sent down to the learned Court below immediately.

Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.

Raghunath Bhattacharya, J.

I agree.