
(2010) 10 CAL CK 0014

Calcutta High Court

Case No: CRR. No. 4167 of 2009

Jaharlal Baskey

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Oct. 6, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 154
- Penal Code, 1860 (IPC) - Section 148, 149, 302, 307, 436

Hon'ble Judges: Girish Chandra Gupta, J

Bench: Single Bench

Advocate: Sekhar Basu and Ranadeb Sengupta, for the Appellant; Sudipto Moitro, Abhra Kumar Mukherjee and Debabrata Roy, for State, for the Respondent

Final Decision: Dismissed

Judgement

Girish Chandra Gupta, J.

This revisional application is directed against a judgment and order of acquittal dated 26th June 2009 passed in Sessions Trial Case No. 18 of 2008 of and 19 of 2008 corresponding to Sessions Case No. 19 of 2007 (State v. Kalipada Mahato and 17 Ors.) under Sections 148/302/436/307 of the Indian Penal Code read with Section 149 thereof.

2. Briefly stated the facts and circumstances of the case are as follows:

In the evening of 24th August 1986 the activists of Jharkhand Mukti Morcha held a meeting in the house of Bharat Tudu of village Jamunabadh in order to discuss matters connected with ensuing election to the State Assembly. The participants stayed overnight in the house of the aforesaid Bharat Tudu. In the morning at about 8/8.30 a.m. 10/12 persons set out from the house of the said Bharat Tudu and proceeded to the east of the village. They were waylaid in the Palash jungle by 200/250 armed people carrying CPI(M) banners. The aforesaid 10/12 activists of the Jharkhand Mukti Morcha became panicky and ran for their lives. They took shelter in

the house of Shankar Hansda. The cadres of CPI(M) chased them and created pressure upon the aforesaid Shankar Hansda to flush out the persons he had provided shelter. Shankar refused to comply. He as a result was assaulted. His house was set on fire whereupon the activists of Jharkhand Mukti Morcha budged out one after the other. The cadres of CPI(M) started mercilessly beating them. Four activists of the Jharkhand Mukti Morcha were killed on the spot and many were injured. In the evening police visited the place of occurrence when a written complaint was lodged by Shankar Hansda. He also did not survive. He naturally was not there to depose at the trial.

3. The learned Trial Court has recorded an order of acquittal principally on two grounds:

a) the defacto complainant Sankar Hansda in his written complainant alleged that unknown persons had carried out the assault;

b) neither of the surviving injured persons disclosed before the medical officers, who had provided them medical aid, name of any of the assailants. As a matter of fact, one of the injured persons had told that he did not know the assailants. Two of them while giving evidence sought to rope in the accused persons. The learned Trial Court refused to believe them and recorded the order of acquittal which is under challenge.

4. Mr. Basu, learned Advocate appearing in support of this revisional petition submitted that the order of acquittal was passed by the learned Trial Court ignoring the evidence adduced by the PWs.2,3,5,7,10 and 12. Therefore the judgment is perverse and should be set aside.

5. PW 2 is Smt. Ranimani Hansda the widow of the deceased Sankar Hansda. She in her examination-in-chief deposed, inter alia, as follows:

Thereafter, Sudhangshubabu, M.L.A. and Gurupada Hansda assaulted my husband Shankar Hansda. Thereafter, Hapan Murmu set fire to our dwelling house. The supporters of Jharkhand party tried to flee away from our house. At first, Narasingh Tudu came out from our house and then Sudhanshubabu, M.L.A., and another assaulted him and thereafter Babulal Baskey was assaulted.

Thakurdas Soren, Hapan Murmu, Tunaram Hembram, Tulsi Soren, Robi Tudu, Biswanath Soren, Sagar Murmu were involved to the alleged incident.

They are present in accused cage (Identified).

6. She however in her cross-examination deposed as follows:

Thereafter, 100 in numbers CPI(M) party supporters appeared there. Those persons created hulla. On hearing such hulla, I became afraid and thereafter myself and my mother-in-law entered inside of our house.

7. The mother-in-law referred to by the PW2 is the PW1. She in her examination-in-chief deposed that one Sudhanshu had brought hired people. In her cross-examination she deposed that "We the female folks became fear. Out of fear, we entered inside out houses."

8. P.W.3 Thakurmani Hansda is the sister-in-law of the deceased Shankar Hansda. She in her examination-in-chief deposed, inter alia, as follows:

Sudhangshu Babu, M.L.A., set fire to the dwelling house of Shankar Hansda. Gurupada and Hapan assaulted Shankar Hansda. Four persons expired on the date of the incident due to assault.

9. She in her cross-examination admitted that "after completion of the incident I came out from my house". She admittedly was not an inmate of the house of the deceased Shankar Hansda. She is the wife of the younger brother of Shankar Hansda living in a separate adjacent house.

10. PW 5 Sibram Hembram deposed in his examination-in-chief, inter alia, as follows:

Some persons set fire to the dwelling house of Shankar Hansda. On seeing the flame, I ran away out of fear and at that time Kalipada Mahato assaulted me on my head for which I fell down on the ground.

I was medically treated at hospital.

Sudhangshu Majhi, Baidyanath Murmu, Kalipada Mahato of Dhanda village and Sagar Murmu were moving surrounding the house of Shankar Hansda.

Gobinda, Kalipada, Babulal and Narshingh were murdered in the said incident.

11. PW 5 deposed in his cross-examination that he had seen the incident from the veranda of the house of Banamali. According to the evidence of the PW3 Banamali has a separate house. He also admitted in his cross-examination that he did not tell the police that he was assaulted by Kalipada Mahato.

12. P.W.7 Kiriti Hansda deposed, inter alia, as follows:

Thereafter, Sudhanshu Majhi, MLA assaulted Shankar Hansda on his head. As a result of which Shankar Hansda fell down. The wife and mother of Shankar Hansda took Shankar inside the house. Sudhangshu Majhi, MLA directed others to set fire to the Jharkhand supporters. Sudhangshu Majhi, Hapan Murmu set fire in the dwelling house of Shankar Hansda.

13. PW 10 Banamali Hansda deposed in his examination-in-chief as follows:

The incident occurred on 8th Bhadra, 1393 B.S., Monday, at about 8.30 a.m. On the date and time of the accident I was at my house. The Jharkhandees party members sustained injury due to assault by CPI(M) party supporters and the dwelling house of Shankar was set on fire. Four Jharkhandees party members, namely, Kalipada

Baskey, Gobinda Hansda, Babulal Baskey and Nar Singh Tudu died. Shankar Hansda and Kiriti Hansda also sustained injuries. I had seen the alleged occurrence through the window of my Cottaha Ghar.

14. He in his cross-examination deposed that he did not disclose his knowledge to the police about the incident.

15. P.W.12 Subodh Hansda deposed in his examination-in-chief as follows:

I went to Jamunabadh village with Narshing Tudu on 8th Bhadra, 1393 B.S. On that day I remained at Jamunabadh village. Murder took place in between 8.00 a.m. to 8.30 a.m. under the leadership of Sudhanshu Majhi.

16. Mr. Moitra, learned Advocate appearing for the accused opposite parties submitted that none of the witnesses referred to by Mr. Basu adduced believable evidence. According to him the evidence of the PWs.2 and 3 is contradictory to each other. Moreover P.W.2 in her cross-examination deposed that the Kheriyas assaulted the Jharkhandees. He also drew my attention to the evidence of the P.W.1 who deposed that out of fear all the female members entered inside the house. He therefore contended that it is only fair to conclude that this witnesses did not really see anything besides the fact that their evidence is contrary to the statement made by the deceased Shankar Hansda u/s 154 of the CrPC. With respect to the evidence of the PW 5 Mr. Moitra submitted that PW 5 in his cross-examination deposed that he walked on foot to the hospital. He did not also disclose to the Medical Officer the names of the persons who had allegedly assaulted him or any of the other victims.

17. He in his cross-examination also admitted that he did not tell the police that he was assaulted by the supporters of the CPI(M) party.

18. P.W.10, according to Mr. Moitra, is not even an eyewitness because according to his own evidence he was in his own house watching the incident from the window of his cottah ghar. P.W.12 is an outsider who claimed to have come to the village at the time of occurrence of the incident and had seen the assault which took place under the leadership of Sudhanshu Mazhi. Mr. Moitra submitted that evidence of this witness is anything but true.

19. I have considered the rival submissions advanced by the learned Advocates and am of the view that the criticism of the evidence of the PWs. 2, 3, 4, 5, 7, 10 and 12 made by Mr. Moitra is not without any force. Moreover when the two factors taken into consideration by the learned Trial Court, indicated above, are applied to the evidence of these witnesses the conclusion is irresistible that the learned Trial Court took a possible view of the matter. Therefore no interference is warranted.

20. Mr. Basu in reply submitted that the learned Trial Court did not at all advert to the charge u/s 436 of the Indian Penal Code and therefore the order under challenge is patently bad. This submission of Mr. Basu is no doubt correct. The learned Trial Judge did not in his judgment discuss at all with respect to the charge

u/s 436 of the Indian Penal Code. But I am inclined to think that there is no dependable evidence with regard to the charge u/s 436 IPC. I already have indicated the evidence of the witnesses relied upon by Mr. Basu. If the evidence of PWs.2 and 3, set out above, is compared it would appear that according to the PW 2 the accused Hapan Murmu set fire to the dwelling house of the deceased Shankar Hansda whereas according to the PW 3 Sudhanshubabu, MLA, set fire to the dwelling house of Shankar Hansda. According to PW 5 some persons set fire to the dwelling house of Shankar Hansda. According to PW 7 both Sudhangsubabu and Hapan Murmu set fire to the dwelling house of Shankar Hansda. According to PW 10 CPI(M) supporters set fire to the house of Shankar Hansda. According to the P.W.11 CPI(M) supporters set fire to the dwelling house of Shankar Hansda. PW 12 is completely silent in his examination in chief with respect to this incident.

21. This evidence compared with the written complaint of Shankar Hansda, where there is absolutely no indication involving any of these accused persons provides a pointer why the learned Trial Court may have considered that the case u/s 436 of the Indian Penal Code had not been proved and that could be a reason why he did not deal with the matter separately. If the assault had been carried out by unknown persons is it probable that the act of setting fire to the house of the deceased Shankar could have been resorted to by another set of persons?

22. I therefore am not in a position to find any serious fault with the judgment under challenge warranting an interference. This petition is therefore dismissed.

23. Lower Court Records with a copy of the judgment be sent down to the learned Trial Court forthwith.

24. Urgent xerox certified copy of this judgment, be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.