Uttam Ghosh alias Uttam Kumar Ghosh Vs The State of West Bengal

Court: Calcutta High Court

Date of Decision: June 30, 1995

Acts Referred: Penal Code, 1860 (IPC) â€" Section 147, 148, 307, 323, 34

Citation: (1995) CriLJ 4079

Hon'ble Judges: S. Narayan, J

Bench: Single Bench

Advocate: D.K. Sengupta and Amitava Ganguly, for the Appellant; Tapas Midya, for the Respondent

Judgement

S. Narayan, J.
This is an appeal against the judgment and order dated 24-4-84 passed by Shri A. K. Maity, Additional Sessions Judge,

Nadia, First. Court, whereby the sole appellant Uttam Ghosh was convicted of the offence u/s 307 of the I.P.C. and was sentenced to undergo

R.I. for five years for the said offence. The period of earlier detention, if any, was directed to be set of against the term of imprisonment imposed

on him. It may be added here that by the same order some other co-accused persons, namely, Babloo Ghosh, Satya Ghosh, Gopal Ghosh and

Nemai Ghosh, who had been jointly charged u/s 307/34 of the I.P.C. along with the appellant, were acquitted of the said charge.

2. The prosecution case in brief is that in the night between the 4th and 5th May, 1982, the R. G. Party (Resistance Group Party) of village

Garuimari, P.S, Chapra, District Nadia was patrolling in the village under the control of the Group Captain Jagannath Ghosh (PW 8). The R.G.

Party consisted of some other members such as the informant Paritosh Ghosh (PW1), Anukul Ghosh (PW2), Bhakta Sardar (PW 3), Madan

Mohan Ghosh (not examined), Tehul Sardar (not examined) and Sahadeo Sardar (not examined). The watch and guard duty of the R.G. Party

was over at about 4 a.m. in the early morning and, thereupon, the members had dispersed and were returning to their respective home. Suddenly,

a sound of firing was heard and the Group Captain Jagannath Ghosh (PW 8), sustained some injuries and fell down on the ground. The members

of the R.G. Party having heard the sound of firing rushed towards the victim Jagannath Ghosh, who had sustained injuries on his jaw and ear. They

also found the appellant Uttam Ghosh and the co-accused present there being variously armed. Appellant Uttam Ghosh threatened them not to

proceed ahead and, thereafter, they all (accused) dispersed. On the alarm being then raised, some villagers arrived there, nursed the victim and

took him to Chapra Police Station in a cart. The informant, Paritosh Ghosh (PW 1) lodged F.I.R. at 5.25 a.m. on 5-5-82. The victim was

thereafter sent to Chapra Primary Health Centre, where he was examined by Dr. Aruna Mukherjee (PW 5), who soon thereafter referred him to

Sakti Nagar Hospital, where he was treated by Dr. A.K. Basu Mallick (PW7). The case was investigated by the S.I. of Police, Mani Mohan Basu

(PW 9), who, ultimately, submitted a charge-sheet in the case.

3. The defence was the denial of all the material allegations, made by the prosecution; and it was contended inter alia that the informant along with

the victim and others illegally entered into the house of one Namita @ Nanu Ghosh (not examined) at about 2 a.m. on the same night and assaulted

her. They also committed theft in the house of Namita. The accused were said to have been falsely implicated due to previous enmity between the

parties.

4. At the trial, it was held that the prosecution had been able to establish a charge u/s 307 of the I.P.C. only against the appellant Uttam Ghosh,

whereas the other co-accused were declared to be entitled to benefit of reasonable doubt; and hence there was a judgment and order as already

referred to above.

5. The appellant has assailed the findings of the Trial Court on the ground of the material witnesses of the prosecution being partisan due to some

previous enmity as also on account of certain contradictions in the medical evidence on the record. It was also urged that the appellant was entitled

to the benefit of doubt as given to the co-accused, who have since been acquitted.

6. Enmity cuts both the ways. The victim and the appellant were admittedly on inimical terms. In the instant case, therefore a question does arise

whether an attempt of murder was made on the victim on being perpetrated by the enmity between the parties or whether it was because of that

enmity that the appellant has been falsely implicated in the case. On an earlier occasion, some time in the past prior to the incident of the instant

case, the victim (PW 8) had been accused along with the informant (PW 1) and some others in a murder case of one Ranjit Ghosh and also for an

attempt of murder of the appellant. The case had, however, ended in acquittal. The victim (PW 8) was also involved in a case for the murder of

one Susanta Ghosh, uncle of the appellant; and he had been convicted therein. An appeal arising out of the said order of conviction was, however,

pending before this Court (vide cross-examination of the informant, PW 1). It would be further derived from the evidence of the informant (PW 1),

the victim PW 8 and the I.O. (PW 9) that with regard to an alleged occurrence of the same night i.e., 4/ 5th May, 1982 being the date of

occurrence of the same night i.e., 4/5th May, 1982 being the date of occurrence of the instant case, a criminal case had been instituted by one

Namita Ghosh, daughter of the uncle of the appellant, which was numbered as Chapra P.S. Case No. 6 dated 5-5- 82. A charge-sheet had been

submitted in the case for the offence under Sections 147, 148, 448, 354, 323 and 379 of the I.P.C. The occurrence of that case was said to have

taken place at 2.15 a.m. of 4/5.5.82 i.e., about two hours earlier than the alleged time of occurrence in the instant case. The occurrence as alleged

by Namita Ghosh has been denied in the evidence of the informant (PW 1) and the victim (PW 8), who were cousins. No evidence whatsoever

was adduced on behalf of the defence either to establish the probability the case of Namita Ghosh or to connect the incident with the alleged

occurrence of the instant case. Be that as it may, the outcome of the admitted enmity between the parties would simply require a strict scrutiny of

the evidence on the record and it would be necessary to determine whether the point of enmity would support the probability of the defence

version of false implication of the allegation of the voluntary attempt of murder of the victim by the appellant.

7. Though the victim (PW 8) was not the author of the F.I.R. he did assert in his evidence that it was the appellant, who had fired at him with a

pipe gun in his hand. The F.I.R. lodged by his cousin (PW 1) also pointed that on the sound of filing when he (PW 1) rushed to the spot, he saw

the victim falling down on the ground with injuries on his person and also that the appellant Uttam Ghosh, standing there with a gun in his hand,

gave threat that he would fire again if anybody proceeded ahead. There was thus a pin point allegation of firing the gun shot only against the

appellant and not against the co-accused persons (who have since been acquitted).

8. In order to corroborate the gist of the allegation made by the victim, my attention was drawn to the F.I.R. lodged at 5.15 a.m. i.e., to say, just

after an hour or so of the occurrence and also to the evidence of the three material witnesses (PWs 1,2 and 3). The victim (PW 8) and the

aforesaid witnesses (PWs 1, 2 and 3) along with the appellant and other co-accused persons belonged to one and the same village, called Mouza

Garuamari. There was a R.G. Party operating in the said village for watch and guard duty during the night. While the victim (PW8) was the head

i.e., Captain of the Party, the other three witnesses were ordinary members of the R.G. Party. There is no manner of doubt raised in the evidence

during the trial as to such functioning of the R.G. Party in the night of the alleged occurrence. There were some other members also in the R.G.

Party such as Madan Mohan, Tetul Sardar, Sahadev Sardar and Jugal Sardar, who have not been examined and there appears no necessity of

their examination as well. Thus, the supporting witnesses (PWs 1,2 and 3) have been able to establish their competency to depose of the

occurrence. It would be derived from the corroborated statements of these witnesses (PWs 1,2 and 3) that at about 4.30 a. m. when they had just

dispersed at the close of their watch and guard duty, there was a sound of firing and, on being attracted by the sound, they rushed towards the

spot and saw the victim having sustained injuries by gun shot and they also identified the appellant while holding an Article, like gun. They also

asserted in their evidence to have learnt from the victim (PW 8) that it was the appellant, who had fired the shot inflicting the injuries on the person

and, in this way, they have corroborated the victim on the point. PWs 1 and 3 also asserted in their evidence that the appellant had also given

threat of firing another shot if they proceeded ahead towards him (as also narrated in the F.I.R.). No material contra-diction was pointed out in the

evidence of the I.O. (PW 9) with regard to the real sum and substance of the evidence of these witnesses.

9. As to the source of light for identification of the culprit, it is well to notice that the occurrence allegedly took place at about 4.00-4.30 a.m. i.e.,

to say, in the early morning at the time just before dawn and soon after the night duty of watch and guard was over. It was then the summer season

i.e., in the month of May 1982. An additional source of light was said to be the torch light flashed from both the sides. There was also utterance

made by the appellant while giving threats to the prosecution party after firing gun shot and so the witnesses had an opportunity to listen his voice.

True it was that the prosecution has failed to produce the torches used at the time of the occurrence. The I.O. (PW 9) admitted in the cross-

examination that he did not seize any torch. Be that as it may, I do not think that in the given facts and circumstances of the case as it would be

derived from the evidence of material witnesses (PWs 1,2,3 and 8), it was necessary to go into this sort of technicality regarding the seizure and

production of the torch. As a result of the scrutiny of the evidence on the point, one would not bear any doubt in mind over identification of the

appellant.

10. In the back drop of the above direct and cogent evidence regarding identification of the appellant, there appears no earthly reason for the

prosecution to substitute a wrong person for the real assailant. The long standing enmity between the parties would rather go to a great extent in

suggesting the voluntary role of the appellant in the assault of the victim in the manner as alleged. It would not be out of place to mention here that

in spite of suggesting a defence version of the occurrence taking place a few hours earlier, no effort was actually made to adduce evidence so as to

introduce the probability of the said defence version on the record and, practically, there was no nexus established between the prosecution history

and that set up on behalf of the defence as per the F.I.R. (not on the record), lodged at the instance of Namita Ghosh, neice of the appellant.

11. Now, adverting to the medical evidence on the record it may first be pointed out that the relevant, injury reports were not actually, got marked

as exhibits. The two concerned doctors, namely Dr. Aruna Mukherjee (PW 5) and Dr. Anup Kumar Basu Mallick (PW7) were of course

examined and they deposed on the basis of the relevant injury reports. The defence had been able to cross-examine both the doctors with regard

to the recitals in the relevant injury reports and there arose no question or prejudice for not putting exhibit marks on the reports. The victim (PW 8)

had been first examined by Dr. Aruna Mukherjee (PW 5) at Chapra Primary Health Centre, where he was first brought soon after the occurrence.

Thereafter, the victim was referred by the said doctor (PW 5) to the District Hospital at Nadia where he was examined by Dr. Anup Kumar Basu

Mallick (PW 7). Both the doctors were consistent, in opinion, that the victim had received gun shot injury or bullet injury. An attempt was made on

behalf of the defence to make out some sort of contradiction said to have introduced in the evidence of these doctors. As per the version of Dr.

Mukherjee (PW 5) the victim had received one bullet injury 1''/2"" x 2"" x1/2"" on the left temporal region by bullet fired from some fire-arm

whereas, the other doctor (PW 9) pointed out that there were two gun shot injuries on the person of the victim, one being gross lacerated injury 3

x 11/2"" into muscle deep over left zygomatic region with fracture of left zygomatic arch and the other being gross lacerated injury over left half of

the ear involving skin, muscle and certilage. It is significant to note here that at Chapra Primary Health Centre Dr. Mukherjee (PW 5) was of

definite opinion that the victim could be given better treatment in a hospital at District level and, therefore she immediately referred the case there

and, thereupon, there was a detailed examination made by a doctor (PW 7) at the District Hospital. It would be certainly derived from the

evidence of these two doctors (PWs 5 and 7) that the injuries had been caused on the left side ear and jaw extending over both the portions,

which were very close to each other. It was because of this that as per the prosecution story it had been consistently alleged that the injuries had

been inflicted on the ear and jaw of the left side. In this view of the matter I do not think that there was any sort of material contradiction between

the evidence of the two doctors and, in fact, both of them have referred to the injury inflicted on the temporal region which extended partly over

the left ear and partly on the left jaw adjacent to each other. The defence was, therefore, not to gain anything out of the versions of the doctors

expressed in different technical language. It may be added here that Dr. Mukherjee (PW5) stated that he examined the victim at 14 a.m. This was

an obvious mistake either because of slip of tongue or slip of pen. It could not be the case of either side like that, rather it was obvious on the

record that the victim was examined by the doctor (PW 5) soon after he was brought to the Primary Health Centre right from the place of the

occurrence.

12. Since some other co-accused persons, facing joint trial along with the appellant, have been acquitted by one and the same order, it has been

urged on behalf of the appellant that the benefit of doubt as provided to them should also be granted in his favour. It would be, however, gathered

from the findings of the Trial Court that the sole reason for their acquittal was only this much that as per the prosecution story there was simple

allegation that they were present with the appellant. The Trial Court was of the opinion that the evidence on the record did not suggest that those

co-accused persons were aware of the intention of the appellant or that they had also an intention to commit murder. 1 find no reason to disagree

with this findings of the Trial Court. It was because of this that it was held by the Trial Court that the charge could not be established beyond

reasonable doubts against the co-accused persons. Nothing could be made out of this aspect of the case so as to give any sort of benefit of doubt

to the appellant.

13. As a result of the discussions above I find myself in agreement with the findings of the Court below while holding the appellant guilty of the

offence u/s 307 of the I.P.C. and, therefore, the order of conviction has got to be maintained.

14. As to the quantum of sentence it was, however, pointed out that the appellant was an young man aged about 25 years at the time of the

conviction and that the occurrence was an outcome of the previous enmity between the parties and further that the appellant fired a single shot

whereas he was in a position to repeat the same. In this view of the matter I do feel inclined that ends of justice could be subserved by imposing

R.I. of only 4 years instead of 5 years. The order of sentence is modified accordingly.

15. The appeal thus fails with regard to the order of conviction and accordingly it is allowed in part with modification only with regard to the order

of sentence as noted above.