Machu Gagrai Vs State of West Bengal

C.R.A. No. 334 of 2002

Court: Calcutta High Court

Date of Decision: Aug. 30, 2005

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 313, 357#Evidence Act, 1872 â€" Section 27, 8#Penal Code, 1860 (IPC) â€" Section 302, 304, 304(1), 304(11)

Citation: (2006) 1 CALLT 557 : (2005) 2 ILR (Cal) 391

Hon'ble Judges: Debi Prasad Sengupta, J; Arun Kumar Bhattacharya, J

Bench: Division Bench

Advocate: Y.J. Dastoor, Prabir Majumdar and Mayukhi Mitra, for the Appellant; Kazi Safiullah and Swapan Mallick, for the Respondent

Judgement

Arun Kumar Bhattacharya, J.
The present appeal is directed against the Judgment and order of conviction and sentence passed by the

learned Additional Sessions Judge, 1st Court, Howrah in Sessions Trial Case No. XX (October), 2001 on 28.2.2002.

2. Shortly put, the prosecution case is that on 28.05.2001 at about 8.30 p.m. while accused Machu Gagrai in drunken condition was cutting jokes

with the female labourers of the brickfield of Bablu and wanted to put vermilion on the forehead of a labourer Lachmi Bedra, the defacto

complainant''s husband Kishan Gagrai, a coolie leader of the said brickfield who was also intoxicated, protested saying that putting vermilion on the

said girl would hot be allowed, as he had taken the girl from her father and the accused is at liberty to do whatever he wishes after his taking back

the girl to her father at her native place. It followed an altercation and thereafter scuffle between them and in this way they proceeded towards the

house of the accused. At about 9.00 p.m. on hearing the cry of Kishan that Machu had stabbed him on his abdomen resulting in bleeding, the

defacto complainant and others rushed towards the house the accused and found bleeding from the abdomen of Kishan. The matter was

immediately reported to the office of the brickfield and the injured was removed to Medicare Nursing Home at Shibpur where he succumbed to

injuries in the early morning of 29.05.2001. The accused fled away after the incident and could not be found despite thourough search. Hence, the

accused was charged u/s 302 IPC.

3. The defence case, as suggested to P.Ws. and as contended by the accused during his examination u/s 313 Cr. P.C., is that the accused did not

stab the injured. Nothing was recovered from his possession. The injured was not in a position to give any statement. He has been falsely

implicated in this case.

4. Seven witnesses were examined on behalf of the prosecution, while none was examined on behalf of the defence, and after considering the facts,

circumstances and materials on record, the learned Court below found the u/s 302 IPC, convicted him thereunder and sentenced him to suffer

imprisonment for life and to pay fine of Rs. 2000/- learned to R.I. for three months.

5. Being aggrieved by and dissatisfied with the said order of conviction and sentence, the accused has preferred the present appeal.

6. All that now requires to be considered is whether the learned Court below was justified in passing the above order of conviction and sentence.

7. The vital witnesses in this case are P.Ws. 1 to 3, 5 to 7, another being formal.

8. According to the evidence of P.W.I Suru Gagrai (defacto complainant), who is also a labourer of the brickfield of Bablu at Ankurhat her

husband Kishan who was a coolie leader, used to collect labourers from their native village, Tata, Chakradharpur, Singbhum.

Accused Machu, a labourer of the same brickfield, tried to put vermilion on the forehead of another labourer Lachmi which was protested by her

husband saying that as he brought Lachmi from his native village he would send her to her father''s house and thereafter the accused could do

whatever he liked. After the incident her Husband and accused went to take liquor and returned and thereafter the accused stabbed on the chest of

her husband with a knife/bati (Mat. Ext. 1) in front of their room and she witnessed it. The local people brought her husband to the hospital and the

matter was reported to the police of Domjur P.S. She narrated the incident to Abdul Gaffar (P.W.2), an employee of the said brickfield, who

scribed the FIR (Ext. 1), Lachmi, Tulsi, Sharila, Janaki, Fulmani, and Sonalal returned to Singbhum as the work of the brickfield was temporarily

liquidated. P.W. 2 Abdul Gaffar Molla scribed the FIR on 29.05.2001 in the office room according to the dictation of P.W.I and became a

witness to the seizure of the offending weapon i.e. bati (Mat Ext. I), bloodstained earth and controlled earth by the police u/s lists (Exts. 3/2 &

2/1). The labourers took the injured in front of the office room, called and narrated the incident which took place in the brickfield near the labour

shed/quarter of Kishan to him. He took the injured before Dr. Samaresh Barman and thereafter to Medicare Nursing Home. The incident was

reported to Domjur P.S. over phone and police arrived there prior to his scribing the FIR. P.W. 7 Dr. A.K. Sharaf, M.S., F.R.C.S. owner of

Medicare Nursing Home, Howrah admitted Kishan Gagrai with stab injury on upper abdomen in his Nursing Home on 28.05.01 at about 11.10

p.m. The patient who was conscious gave a statement (Ext. 10) that he was hit with a knife by a labourer Machu. The patient was operated at

11.40 p.m. and it continued upto 1.10 a.m. The condition of the patient was deteriorating and he expired at about 4.05 a.m. on 29.05.2001. He

informed (Ext. 7) the matter to Shibpur P.S. through Manager Mr. Kumar Ranjan Das. P.W.4 S.I. Rupak Sarkar on the basis of letter (Ext. 7) of

Kumar Ranjan Das, Manager of Medicare Nursing Home recorded GD being No. 1941 dated 28.05.2001 and on coming to learn about death of

the patient on 29.05.2001 had been to Medicare Nursing Home, held inquest (Ext. 4) over the dead body of the victim in presence of witnesses,

sent the dead body through constable Umasankar Singh for P.M. examination and subsequently seized the wearing apparel i.e. full pant of the

victim under a section list (Ext. 6). P.W.5 Dr. S. Das, M.O. of Howrah District hospital, on holding PM examination over the dead body of the

victim Kishan Gagrai, identified by constable Umashankar Singh, on 30.05.2001 found (1) one traverse (oblique) sharp-cut injury over the left side

of chest from sternum to upper part of abdomen with six stitches, (2) one longitudinal incisional mark with 20 stitches present over midline

abdomen with six stitches, (2) one longitudinal incisional mark with 20 stitches present over midline abdomen upto umbilicus, (3) one incision mark

with rubber tube present over left side of abdomen for drainage peritioneal fluid with blood and opined was due to shock and hemorrhage

following above noted injuries, ante mortem and homicidal in nature. He actually found one Injury in the left side of chest and the other two injuries

were caused by surgeon at the time of operation. He found fracture of rib Nos. 10, 11 and 12 on the left side of the chest and opined that the said

deep injury is not possible if anybody fall on a sharp-cutting weapon. P.W.6 S.I. B.B. Dey, on taking up investigation of the case on 29.05.2001

as per order of O.C., visited the P.O. arrested the accused, seized the offending weapon as shown by the accused under a section list (Ext. 3/1),

blood-stained earth from the P.O. under another section list (Ext. 2/1), examined all the available witnesses, informed the matter to Shibpur P.S.

and on account of his transfer made over the CD to O.C., Domjur P.S. on 30.07.2001. P.W.3 S.I. M.S. Nath after taking charge of further

investigation, collected inquest report, PM report and submitted charge-sheet against the accused u/s 304 IPC.

9. Though P.W. 1 claims to be an eyewitness, on being confronted with the averments in the FIR she ultimately admitted that at 9.00 p.m. on

hearing the cry of her husband that accused Machu stabbed on his abdomen and blood was coming out, she along with others rushed to the room

of accused Machu i.e. she had no occasion to witness the incident of actual assault by the accused. The case virtually rests on circumstantial

evidence, the circumstances being three-fold viz. (1) the victim was last seen together in the company of the accused, (2) dying declaration

recorded by P.W. 7 and (3) discovery of the weapon of offence on being pointed out by the accused.

10. So far the first circumstance above is concerned, ordinarily the fact that the accused and deceased were last found together and failure of

accused to explain the injuries of the victim is a strong circumstance pointing to murder by the accused. The case of Ashok Kumar Vs. The State

(Delhi Administration), , Ganeshlal v. State of Maharashtra reported in 1993 SCC (Cr.) 435 and U.P. v. Satish reported in (2005)1 C.Cr. L.R.

(SC) 366 may be relied on. In Ganeshlal case (supra) it was held that when the death had occurred in the custody of the accused, the accused is

under an obligation to give a plausible explanation for the cause of her death in his statement u/s 313 Cr. PC at least. Any sort of explanation on

behalf of the accused will not suffice. The explanation must be cogent and reasonable. In the case on hand, it is the specific evidence of P.W.I that

when the accused tried to put vermilion on the forehead of Lachmi, her husband protested saying that as he brought Lachmi from his native village

he would send her to her father''s house and thereafter the accused could do whatever he liked, and after this incident her husband and accused

went to take liquor and returned and thereafter accused stabbed on the chest of her husband in front of their room. Though that part of her

evidence of alleged witnessing the incident of assault by the accused on her husband has been relied, as discussed above, there is no denial of the

fact that the victim was last seen by her in the company of the accused, in her cross-examination. It is the evidence of P.W.2 that labourers brought

the injured in front of the office room and narrated the incident to him and he took the injured to Dr. Samaresh Barman and therefrom to Medicare

Nursing Home where he was admitted at about 11.10 p.m. as deposed by P.W.7. Virtually no explanation was offered by the accused during his

examination u/s 313 Cr. PC except denying the matter. So, the above very fact of injury on the left side of chest, from sternum to upper part of

abdomen of the victim who was with the accused leads to show that none but the accused caused the said injury particularly when there is no

evidence that any other person was with the victim at that moment.

11. In regard to the second circumstance above, the principle on which the dying declarations are admitted in evidence, is based upon the legal

maxim ""Nemo morituras praesumitur mentire"" i.e. a man will not meet his maker with a lie in his mouth. It was always to be kept in mind that

though a dying declaration is entitled to great weight, it is worthwhile to note that as the maker of the statement is not subjected to cross-

examination, it is essential for the Court to insist that dying declaration should be of such nature as to inspire full confidence of the Court in its

correctness. The Court is obliged to rule out the possibility of the statement begin the result of either tutoring, prompting or vindictive or product of

imagination. Before relying upon a dying declaration, the Court should be satisfied that the deceased was in a fit state of mind to make the

statement. Once the Court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base

is conviction without any further corroboration as rule requiring corroboration is not a rule of law but only a rule of prudence; as was observed in

Uka Ram v. State of Rajasthan reported in AIR 2001 SC 1814. Here, it is the definite evidence of P.W.7 that prior to taking up operation, the

patient who was conscious, gave a statement that he was hit with a knife by a labourer Machu, and it was recorded in the top of the bed-head

ticket (Ext. 10) and it also finds place in the letter (Ext. 7) dated 28.05.2001 addressed to O.C., Shibpur P.S. informing the matter from the end of

Nursing Home. Merely because no nursing staff was associated with the said statement by way of putting his/her signature, it is no ground for

disbelieving the testimony of P.W.7, as he being a doctor cannot be said to have any personal interest in the matter and whatever he observed and

did in the course of his duty as a doctor, it will be deemed to be correct unless contrary is shown. Therefore, this is another important piece of

evidence which strengthens the prosecution story.

12. As regards third circumstance abvoe, P.W.6 deposed that after taking up investigation he visited the P.O., arrested the accused and seizured

the offending weapon i.e. bati (Mat Ext. I) on being shown by the accused under a section list (Ext. 3/1), and P.W.2 is a witness to the said

seizure. That the seizure of the weapon of offence was made on being pointed out by the accused has been noted in the said, section list.

Undoubtedly no statement of the accused was recorded prior to the said recovery and seizure. Section 27 allows proof of such part of the

information as relates distinctly to the fact discovered. If the police officer wants to prove the information the Court would have to consider

whether it relates distinctly to the fact discovered. If the police officer wants to prove the information, the Court would have to consider whether it

relates distinctly to the fact discovered. If an accused led a police officer and pointed out the place where the incriminating article was hidden, such

evidence is admissible without attracting operation of Section 27. The case of Ramkishan Mithanlal Sharma Vs. The State of Bombay, may be

relied on. That apart, recovery of such incriminating article on being pointed out by the accused is also admissible as conduct u/s 8 of the Evidence

Act irrespective of whether any statement of the accused was contemporaneously recorded. The case of Prakash Chand Vs. State (Delhi

Administration), may be referred to.

13. Inferences which may arise leading to such recovery are: (i) the informant accused is connected with the fact so discovered and if the fact is

incriminatory the connection of the accused therewith is established, (ii) the fact so discovered was within the exclusive knowledge of the informant,

(iii) the fact is referable to the culpable possession of it by the informant, (iv) the informant has secreted away the fact with the culpable motive, and

(v) the informant was a person who was responsible for the culpable act by reason of which the resultant fact is traced and available, and all these

inferences may be circumstantial bringing the accused nearer the offence. If the authorship of the concealment is part of the information given by the

accused that is an additional circumstance to fix criminality on him in the absence of any acceptable explanation leading to the innocence.

Therefore, the above fact of recovery of the weapon of offence on being pointed out by the accused is an additional link in the chain of

circumstantial evidence in proving the guilt of the accused.

14. As regards motive, the prosecution need not prove it for it is known only to the accused. Men do not act wholly without motive and failure to

discover the motive of the offence does not signify the non existence of the crime nor proof of motive is ever an indispensable factor for conviction,

as was held in the case of Ashok Kumar (supra). In the case on hand, since the victim protested against the attempt of the accused who was

intoxicated to put vermilion on the forehead of Lachmi i.e. there was an obstruction from his end, it prompted the accused to commit the crime.

15. Therefore, considering the facts, circumstances and materials on record the prosecution can be said to have brought home the case against the

accused beyond reasonable doubt.

16. The next question that arises for consideration is whether the offence committed comes under the purview of Section 304 IPC. Mr. Y.J.

Dastoor, learned Counsel for the appellant, on referring the case of Jagtar Singh Vs. State of Punjab, and AIR 1983 185 (SC) contended that as

both the accused and the victim were in drunken condition, as there was an altercation over the said issue of putting vermilion on the forehead of

Lachmi followed by scuffle and assault which took place on the spur of the moment, the offence comes under the purview of Section 304(II). Mr.

Swapan Mallick, learned Counsel for the State, on the other hand, submitted that consideration the nature of injury caused on a vital part of the

body, the offence comes within the fold of Section 304(1) IPC.

17. Part I applies where the accused causes bodily injury with intention to cause death or with intention to cause such bodily injury as is likely to

cause death, whereas Part II comes into play when death is caused by doing an act with knowledge that it is likely to cause death but there is no

intention either to cause death or to cause such bodily injury as is likely to cause death. Indubitably, both the accused and the victim were in

drunken condition and there was an altercation over the trivial issue of putting vermilion on the forehead of a female labourer followed by scuffle

and inflicting a single blow by the accused with a bati on the chest resulting in a traverse (oblique) sharp-cut injury over left side of chest from

sternum to upper part of abdomen. The other two injuries took place at the time of surgical operation. There is nothing to indicate in the testimony

of either P.W.5 or P.W.7 that the said injury was sufficient in the ordinary course of nature to cause death. On the evidence it does not appear that

the accused had any premeditation or intention to commit murder of the victim but the circumstances show that he had the knowledge to cause

injury which was likely to cause death, and as such the offence committed comes under the purview of Section 304(II) IPC, for which a sentence

of seven years R.I. and a fine of Rs. 3,000/- i.d. to R.I. for three months more will be adequate and meet the ends of justice. In this connection, the

case of Ram Prakash Singh v. State of Bihar reported in AIR 1998 SC 1190 may also be referred to.

18. Accordingly, the appeal be partly allowed. The conviction and sentence of the appellant u/s 302 IPC is set aside and he is convicted u/s

304(II) IPC and is sentenced to suffer R.I. for seven years and to pay fine of Rs. 3.000/- i.d. to R.I. for three months.

If the aforesaid fine amount is realized, the entire amount be paid to the defacto complainant towards compensation u/s 357 Cr. PC.

Alamats, if any, be destroyed after the period of appeal is over.

Let a copy of this Judgment along with the LCR be sent down at once to the learned Court below.

Debi Prasad Sengupta, J.

19. I agree.