
(2005) 08 CAL CK 0055

Calcutta High Court

Case No: C.R.A. No. 163 of 2000

Manik Shaw

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Aug. 23, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302

Citation: (2006) 1 CALLT 82

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

Bench: Division Bench

Advocate: Sasanka Ghosh, J.N. Chatterjee and Paramita Mukherjee, for the Appellant; Rashbehari Mahato and Puspall Satpati, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Bhattacharya, J.

The present appeal is directed against the judgment and order of conviction and sentence passed by the Learned Additional Sessions Judge, First Court, Hooghly in Sessions Trial Case No. 2(7) of 1999 on 19.01.2000.

2. Shortly put, the prosecution case is that on 26.06.1998 at about 10.00 p.m. on receipt of an information from one Narayan Thakur (P.W. 12) regarding lying of defacto complainant's brother Lakshman Mahapatra with bleeding injury in front of water-tap of Akhra, the defacto complainant (P.W. 1) had been there, found the said brother injured in the abdomen caused by knife and on his query Lakshman informed that on the same date at about 9.30 p.m. when accused Manik Shaw asked for khaini, he could not offer, for which the accused abused him followed by stabbing him on his abdomen after drawing out a knife from waist resulting in his fall on the ground and on his raising an alarm while the neighbours rushed there, he fled away. The complainant removed the victim with the help of neighbours to

Chinsurah Sadar Hospital where he succumbed to injuries on 27.06.1998 at about 6.00 a.m. As he was busy in connection with treatment of his brother, there was some delay in lodging the FIR 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.PC, is that the victim had no capacity to talk and as such he gave no dying declaration. No such incident took place.

4. 13 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 accused guilty u/s 302 IPC, convicted him thereunder and sentenced him to suffer imprisonment for life and to pay fine of Rs. 1000/- i.e. to R.I. for six 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 5, 7, 9, 12 & 13, others being formal.

8. P.W. 4 who was gossiping with his friends at the adjacent field of Roybazar Recreation Club on 26.06.1998 at about 9.30/10.00 p.m. heard an alarm "Banchao, Banchao" from the side of Akhra, immediately rushed along with others to the spot and found Lakshman Thakur, who was wearing a napkin, lying near the water-tap with stab injury and his intestine was coming out. On his query Lakshman informed that as he could not offer khaini, as asked for by the accused Manik, the latter abused him and stabbed him. They asked Narayan Thakur (P.W. 12), who was present, to inform the matter to Ram Thakur (P.W. 1), elder brother of Lakshman. When Ram Thakur came, Lakshman informed him also the same incident. They removed the injured by a trolley van to Chinsurah Hospital where he succumbed to injuries on the following morning, at about 6.30 a.m. Ram Thakur (P.W. 1) lodged an FIR (Ext. 2) which was scribed by Tilak (P.W. 3). The police held inquest over the dead body of the victim in his presence. The above evidence in material particulars is corroborated by P.Ws. 1 to 3, 5 & 12. P.W. 1 Ram Chandra Mahapatra on hearing about the information of murder of his brother Lakshman from Narayan Thakur (P.W. 12) had been to the P.O., found his brother lying seriously injured at the public water-tap at Roybazar, his voice was feeble and on his query he informed that as he could not offer khaini, as asked for by the accused, the accused pulled and stabbed him with a knife. With the help of local people, the injured was removed to hospital where he succumbed to injuries at about 6.30 a.m. Similar is the evidence of P.W. 3 Tilak Roy Chowdhury, P.W. 5 Biswa Ranjan Bhattacharya who was gossiping at the field of their club and P.W. 12 Narayan Mahapatra who was present at the time of said declaration by the victim and informed the matter to P.W. 1. Though P.W. 2 deposed about the said declaration by the victim, in cross-examination he stated

that he did not hear as to what was narrated by the victim to his brother. P.W. 9 Dr. Pradip Mondal, M.O. of Hooghly Sadar Hospital, on examination of the victim at about 11.00 p.m. on 26.06.1998 found him in gasping condition with stab injuries on his abdomen, back and lower part, pulse and blood pressure not recordable and he was not in a position to speak. He admitted him in the hospital and though the patient died at about 11.10 p.m., as per usual practice that a patient's death is not immediately declared, he declared him dead at about 6.10 a.m. in the next morning. P.W. 6 Swapan Mahapatra was simply tendered for cross-examination. P.W. 11 Inspector Subhas Rakshit on receipt of FIR lodged by P.W. 1 on 27.06.1998 at Chinsurah P.S. drew up the formal FIR (Ext. 6). P.W. 8 A.S.I. R.K. Ghosh held inquest (Ext. 1) over the dead body for P.M. examination through P.W. 10 constable Jitendra Narayan Das. P.W. 7 Dr. P.C. Sarkar, M.O. of Imambara Hospital, Chinsurah, Hooghly, on holding PM examination over the dead body of the victim on 27.06.1998 found rigor mortis present and as many as 7 injuries viz (1) one almost round shaped sharp-cut injury of 1/2 radius Just above the umbilicus deep into abdominal cavity, (2) one sharp-cut injury on just above 10" below the supra-sternal region (notch) extended from mid-line obliquely downwards and laterally towards right side deep into thoracic cavity, (3) one sharp-cut injury extending from 1" medial to right axillary fold (anteriorly) of 2 m.m. radius, (4) one round shaped cut injury on right lateral aspect of the wall of middle region of 2 m.m. radius (superficial of skin), (5) one sharp-cut injury with tapering ends 1" x 1/2" deep into the pleural cavity on right lower anterior chest, (6) one sharp-cut injury at the junction of two gluteal folds, round in shape, of 3 m.m, radius, (7) 2 scratch marks 3" and 2" on left lower chest situated transversely, left side intra cranial region contains blood and altered blood and injury of the right side plury contains blood and peritoneal cavity containing clotted blood along with injury of the liver, and opined that the death was due to shock and haemorrhage on account of the above noted injuries, ante mortem and homicidal in nature. P.W. 13 S.I. P.C. Roy on taking up investigation on 27.06.1998 visited the P.O., examined the witnesses, prepared a rough sketch map with index (Ext. 9), arrested the accused, seized the wearing napkin of the deceased under a s. list (Ext. 7), also seized the bed-head ticket of the deceased under another s. list (Ext. 8), collected PM report and after completion of investigation submitted a charge-sheet accused.

9. Mr. Sasanko Ghosh, Learned counsel for the appellant, contended that since the present case hangs upon oral dying declaration which is a weak piece of evidence, the conviction and sentence should be set aside.

10. The incident took place at about 9.30 p.m. on 26.06.98, on hearing an alarm raised by the victim, P.Ws. 3 to 5 and 12 rushed to the P.O. which is by the side of public water-tap at Roybazar when the victim narrated the incident and disclosed the name of the accused as his assailant. They waited till arrival of the victim's elder brother P.W. 1 at about 10.30 p.m. when on query by P.W. 1 the victim again made the same statement and thereafter the victim was removed at about 11.00 p.m. to

Hooghly Sadar Hospital where P. W. 9 found him in gasping condition with stab injuries on abdomen, back and lower part. Though the victim succumbed to injuries at about 11.10 p.m. on that very date, his death was declared by P.W. 9 at about 6.10 a.m. on the next morning. P. W. 7 during PM examination found as many as seven injuries all of which barring one were sharp-cut injuries, as discussed earlier. When none of the said witnesses P.Ws. 1, 3 to 5 and 12 is inimical to the accused and their evidence is so clear and cogent, so independent and disinterested, there is hardly any reason to disbelieve their testimony. If a dying declaration is found true, voluntary, conscious made with normal understanding and the maker was in fit physical condition and if it is free from any embellishment or distortion it can be acted upon. The said evidence of P.Ws. 1, 3 to 5 and 12 being truthful and the above oral declaration of the victim being free from any embellishment or distortion and as such reliable can be the basis for conviction. In this connection, the cases of [K. Ramachandra Reddy and Another Vs. The Public Prosecutor, , Surendra Nath Mohton Vs. State of Bihar,](#) and [Nelluri Subba Rao and Another Vs. State of Andhra Pradesh,](#) may well be referred to.

11. Therefore, there being no material to interfere with the decision of the Learned Court below, the appeal be dismissed. The impugned order of conviction and sentence passed by the Learned Court below is hereby confirmed.

12. 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.

D.P. Sengupta, J.

13. I agree.