(2009) 05 CAL CK 0052

Calcutta High Court

Case No: C.R.A. No. 246 of 2000

Hari Narayan Singh (in Jail)		APPELLANT
	Vs	
State of West Bengal		RESPONDENT

Date of Decision: May 18, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Citation: (2009) 3 CALLT 408 : 113 CWN 1085 : (2010) 7 RCR(Criminal) 937

Hon'ble Judges: Tapan Mukherjee, J; Kalyan Jyoti Sengupta, J

Bench: Division Bench

Advocate: Partha Sarathi Bhattacharyay, for the Appellant;Asimesh Goswami, for the Respondent

Final Decision: Dismissed

Judgement

Kalyan Jyoti Sengupta, J.
By this appeal the appellant Harinarayan, assailed the judgment of conviction and sentence u/s 302 of Indian Penal Code (hereinafter referred to as the IPC), whereby and whereunder the appellant has been sentenced to suffer rigorous imprisonment for life.

2. It appears from the record this case was initiated on complaint made by Sekh Sayed Asli being the son of Late one Enamul Sekh @ Haque, of village Tildanga within the jurisdiction of Farraka Police Station in District of Murshidabad against the accused-appellant u/s 200 of the Criminal Procedure Code. In spite of lodging of FIR OC Government Railway Police Azimganj refused to take action hence a sessions trial case was initiated pursuant to above complaint. The allegations made in the complaint is as follows:

That the complainant and his deceased father on the date of occurrence that is on 2nd November 1993 at afternoon went to Tildanga Railway Station to avail of 418 up Mursidabad-Sahebganj passenger train for journey to Barharowa, and they were

waiting with luggage of 15 kg wheat seeds at platform No. 1 whereat the above train was scheduled to reach. While they were waiting the said accused demanded money for no reason, of his father for carrying wheat seeds, naturally his father refused to pay and oblige the accused. As such altercation between the appellant and his father ensued and in course thereof the accused used filthy languages in view of his father''s refusal to pay money. After some time the appellant furiously opened fire from his service rifle he was carrying them to kill his father and having received gun shot injury his father fell down immediately. He opened fire successively three times. At that time the complainant and the people present there tried to rescue his father but their effort was frustrated as the accused shouted at them to retreat forthwith else threatened to open fire to kill them also. With fear they went to the Station Master, and thereafter the Station Master and those peoples present there with the complainant came back to the spot where his father was lying. Having seen them the appellant opened blank fire to chase them away. As a result neither the Station Master nor any of the above persons was able to reach at the spot where his father was lying. In the mean time the Village Pradhan and other villagers informed the Police Station and SDO. SDPO & BDO. On their arrival at the station and with their help the complainant along with other persons could reach to his deceased father and they found by that time his father was lying dead.

3. Thereafter Officer-in-Charge Azimganj GRP along with other Police personnel came to the spot. They removed his father''s body and sent to Morgue at Lalabag by train. On 3rd November 1993 Post Mortem was held and the dead body was handed over to the complainant. At the first instance FIR was lodged with the OC Azimganj GRP nothing was done. Thereafter this complaint was lodged with the learned SDJM. He after having examined eight witnesses and having found prima facie case committed the same for trial to the Sessions Judge. The learned Additional Session Judge, 2nd Court Mursidabad framed charges u/s 302 on 27th of November 1995. On charge being read over and explained the appellant pleaded not guilty so the aforesaid case stood for trial. The prosecution examined as many as ten witnesses whereas the defence examined one.

4. Mr. Bhattacharya learned Advocate appearing for the appellant while assailing the impugned judgment of conviction and sentence submits firstly, though no ground has been taken specifically it is question of law and can be urged, that the appellant being member of the Railway Protection Force (RPF) can not be proceeded without obtaining sanction u/s 197 subsection (2) of the Cr PC as such the then learned SDJM should not have taken cognizance of the matter besides, being the member of the RPF he enjoy statutory protection u/s 20 of the Railway Protection Force Act 1957 against any prosecution. It does not appear from the records either any sanction was obtained or any notice required under the aforesaid Act was served.

5. He, therefore, contends that there has been complete departure of the procedural safeguard as provided under the law with regard to taking cognizance of the matter, consequently entire prosecution must fail.

6. He submits further the learned trial judge has dealt with this aspect of the matter without addressing correct position of law. He would then urge this being the last Court of fact and law will kindly consider this point as it goes to the very root of the matter. He contends on merit that there has been unexplained considerable length of delay in filing complaint u/s 200 of Cr PC. It is not understood why on the same date of occurrence FIR was not lodged with the appropriate police station. According to him mere statement that the police did not take any action is not convincing to excuse delay. In this matter the incident took place on 2nd November 1993 in the evening while complaint u/s 200 of the Cr PC was made on 20th November 1993. Though it is stated that an FIR was lodged with the Azimganj GRP no record was produced to substantiate this or that the police failed to take up the case. According to him the learned SDJM ought not to have taken cognizance when the investigation pursuant to the FIR was pending. He has relied on judgment of the Hon''ble Supreme Court reported in Dilawar Singh Vs. State of Delhi, on this point. He cites another decision, of the Supreme Court with regard to the delay, reported in Fertilizer Corporation of India Ltd. Vs. State of Bihar, . It is surprising that there has been no seizure or production of the blood stained earth or wearing apparels of the deceased. There was no witness nor any relation present to identify dead body when the post mortem was done by the Autopsy Surgeon. He further submits if the post mortem report is looked into very minutely it would appear that there has been three gunshot injuries whereas all the witnesses described to be eye ones have testified] that there have been two gun shot injuries. Therefore, this contradiction is very vital and it is also unbelievable story that RPF will ask for bribe for; carrying 15kgs of wheat. Strangely the said bag of the wheat was not seized indeed there has been no seizure at all. Even the charges are also vague and no one can understand what was to be answered.

7. He contends that it will appear from the testimony of PW 1 that there has been no mention of presence of other so called eye witnesses who spoke in Court that SDO. BDO, SDPO and Panchayat member came to the spot. Those persons were summoned nor examined by the prosecution, as their version could have been independent and impartial.

8. He farther contends that it is not understood as to why the learned Trial Judge has not discussed evidence of DW 1 having an eyewitness and why his evidence is not acceptable to him. His testimony clearly establishes that the deceased along with other villagers came to the station to pilfer the arterials from stationary goods train. When the appellant in discharge of his duty went to foil their design, the deceased along with other villagers tried to snatch away service rifle from him even he was beaten up by the mob, as such he sustained head injury. During scuffling the bullet

accidentally came out. The appellant was hospitalised, unfortunately no attempt was made for production of documents from hospital to examine the nature of injury he sustained. The learned Judge did not consider answer given to the questions put u/s 313 of the Cr PC, though some of them are irrelevant. The conviction recorded by the learned Trial Judge according to him based on testimony of partisan witnesses.

9. Mr. Asimesh Goswami, learned Public Prosecutor appearing on behalf of the State submits on the question of sanction that on the facts and circumstances of this case no sanction is required as the appellant may be a member of the armed forces but the complain against him was that he demanded bribe, and demand for payment of money cannot be part of discharge of duty.

10. He submits further that in order to invoke section 197 sub-section (2) of the Cr PC it has to be established that appellant has committed offence in discharge of the duty. Similarly notice u/s of the RPF Act as urged, is applicable only in case where there is any act or omission or neglect in course of discharge of duty. On the question of delay he submits plea of delay is untenable by reason of the fact that OC Azimganj GRP came to the spot on the date of incident and written FIR was lodged by the complainant, PW 1 with him and he was assured that appropriate action would be taken against accused. When no action was taken pursuant to the FIR despite assurance the aforesaid complaint was made on 20th November 1993. This fact has been explained in the complaint petition. He submits further that since this trial was not on police report there has been no investigation by the police, question of seizure of any material or production of alamat does not arise. When the eye-witnesses testified there has been an incident of diabolical murder owing to refusal to pay bribe, no further evidence is required. The Autopsy Surgeon being PW 6 has proved that post mortem was held and it was found the said deceased died due to gun-shot injuries and it was homicidal in nature. The plea of appellant sustaining injury has not been proved by producing document. He further submits that when the learned Trial Judge has believed testimony of all the eye witness and other witnesses having observed their demeanour this Court will not brush aside the evidence simply other material evidence is not produced. It is thus established that the said person was killed because of refusal to pay illegal gratification as demanded. There is nor flaw or error in the judgment of the learned Trial Judge to interfere with.

11. On hearing the learned counsels for the parties and having regard to the facts and circumstances of this case we feel it expedient to deal with the preliminary objection raised by the learned counsel for the appellant, Mr. Bhattacharya. He has urged that because of lack of sanction for prosecution u/s 197 of Cr PC and also non-service of notice u/s 20 of the Railway Protection Force Act, 1957 order taking cognisance of matter resulted in trial is vitiated with serious procedural lapses. We notice that this point was taken before the learned Trial Judge who has dealt with the same somewhat differently. He has referred to some other sections of Criminal

Procedure Code which is, in our view not appropriate. We therefore deal with this legal issues. Accordingly sub section (2) of section 197 of the Cr PC and section 20 of the Railway Protection Force Act, 1957 are set out hereunder.

(2) No Court shall take cognisance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

20. Protection of acts of members of the Force. - (1) In any suit or proceeding against any of the Force for any act done by him in the discharge of his duties. It shall be lawful for him to plead that such act was done by him under the orders of a competent authority.

(2) Any such plea may be proved by the production of the order directing the act, and if it is so proved, the member of the Force shall thereupon be discharged from any liability in respect of that act so done by him, notwithstanding any defect in the jurisdiction of the authority which issued such order.

(3) Notwithstanding anything contained in any other law for the time being in force, any legal proceeding, whether civil or criminal, which may lawfully be brought against any member of the Force for anything done or intended to be done under the powers conferred by, or in pursuance of, any provisions of this Act or the rules thereunder shall be commenced within three months after the act complained of shall have been committed and not otherwise; and notice in writing of such proceeding and of the cause thereof shall be given to the person concerned and his superior officer at least one month before the commencement of such proceeding.

12. It is clear from sub section (2) of section 197 that there is statutory bar against exercising power of taking cognizance consequently try any offence against a member of the Armed Forces of the Union while acting or purporting to act in discharge of his official duty except with the previous sanction of the Central Government is obtained.

13. Therefore, upon analysis of the aforesaid sub section in order to take refuge to the aforesaid procedural safeguard one has to satisfy the following conditions:

(i) that he must be a member of the armed forces of the Union;

(ii) act or omission of complaint was committed while acting or purporting to act in the discharge of his official duty.

14. Once two conditions as above are satisfied, obtaining sanction is sine qua non and it has to be obtained at the first instance. Naturally, the Court is to proceed on the basis of the allegations made in the complaint or the Court forwarded by the police as the case may be. Where and when the foresaid protection is available has been settled by the Law Courts long time back as this'' problem came and still

comes more often than not before the Court, therefore, this issue is, no longer, res Integra. However, sometimes, the problem comes with different dimension and no judgment of Court can be rendered as precedent to cover all future eventualities. To what extent the aforesaid protective coverage can be extended has been discussed by the three Judgements of the Apex Court placed before us. In the case of Romesh Lal jain v. Naginder Singh Rana & Ors. reported in (2006) 2 SCC 593 the Hon''ble Supreme Court in paragraph 33 has succinctly stated on this issued as follows.

The upshot of the aforementioned discussions is that whereas an order of sanction in terms 197 Cr PC is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith, but the same would not be necessary when the offence complained of has nothing to do with the same. A plea relating to want of sanction although desirably should be considered at an early stage of the proceedings, but the same would not mean that the accused cannot take the said plea or the Court cannot consider the same at a later stage. Each case has to be considered on its on facts. Furthermore, there may be cases where the question as to whether the sanction was required to be obtained or not would not be possible to be determined unless some evidence is taken, and in such an event, the saia question may have to be considered even after the witnesses are examined.

15. Yet in another case, when it came before the Supreme Court (Rakesh Kumar Mishra v. State of Bihar & Ors. reported in (2006)1 SCC (Cri) 432 the phrase mentioned in the said section "no Court shall take cognisance of such offence except with the previous sanction" was explained in paragraph 9 that the Court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

16. Supreme Court in case of Centre for Public Interest Litigation & Anr. v. Union of India & Anr. reported in (2006) 1 SCC (Cri) 23 the same statement of law as to the meaning of official duty is reported. In paragraph 9 the Court iterated that before section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as to act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the nature of the act that matters to invoke above protective provision.

17. All the aforesaid said decisions have laid down the said proposition of law considering all the previous decisions of the various Courts including Apex Court on the same issue. It is thus, clear on summation of statement of law that it has to be found whether the alleged act or omission has got any relation or nexus with official duty or not. In this case it is to be found what could be official duty of member of

the Armed Forces. The appellant being one of the members of the Railway Protection Force was primarily to discharge the duty of protection the railway properties, and while doing so his duty is to prevent any theft, pilferage being committed or damage being done to the railway property as it appears Railway Protection Force Act. Therefore, in discharging of his duty if any member of the armed forces, commits any act or omission then certainly he is entitled to get protection under this statute. In our view, when a particular person wants to take the plea of statutory protection he is to prove that alleged act or omission was done in relation to or connection his official duty.

18. Here if one goes by the statement and averment in the complaint petition u/s 200 with evidence of the witnesses at that stage it was found the incident of killing of the father of P.W.1 took place, no doubt, when he was on duty. But the cause of death, motive of causing of death was sequel to refusal to pay legal gratification demanded by the appellant. It was no part of the members of the Armed Forces to demand any illegal gratification for discharge of duty or to demand any money or anything else. An illegal act cannot, under any circumstances, be part of any lawful duty. Hence, at the time of taking cognizance of the sanction as alleged by the learned counsel for the appellant under the section 197 was not necessary. On the parity of reasoning as above there was no requirement to serve any notice under the provision of section 20 of Railway Protection Act (Force). While respectfully following ratio laid down in the said Supreme Court decisions, we feel that obtaining of sanction at the threshold is not a sine qua non reading face valuer of complaint and accompanying evidence. Sanction might not be required at the stage but after taking evidence if it is proved that act or omission as alleged in the FIR though apparently beyond the purview of official duty but on evidence being received it was found that it was part of the duty, at the subsequent stage, sanction is required to proceed further. Here it was sought to be established at the time of the trial that the victim, being the father of the complainant, along with a group of people came to pilfer the goods and materials from a stationary goods train at Tildanga Station. At that time D.W.1, accused and other member of the Armed Forces were discharging their duties to check each and every wagon loaded with materials. These people, led by the victim, attacked them and obstructed and also prevented them from discharging duties. It is also sought to be established that in course of, discharge of duty the appellant was assaulted and was injured as he was badly beaten up, so he was to be admitted to the hospital. We have gone through the evidence in this regard and for the time being we are not discussing in detail and only for the purpose of obtaining sanction or serving notice as above, we find that the plea taken by the appellant is not substantiated by oral evidence of D.W.1 alone. If there has been any case of incident of assault or prevention of duties this could have been recorded in the general diary of the RPF, maintained by them. No complaint of cross case was lodged with any police station. Even no document was produced to establish the appellant & D.W.1 were booked for duty at the time of occurrence.

Even no document has been called for to prove that he was admitted to nay hospital for treatment. Since burden laid upon the defence to prove the fact to get the protection of section 197. He has failed to discharge. Oral evidence in this regard by the D.W.1 is not sufficient to accept this and to hold burden having been discharged. Therefore, we hold that even after taking evidence it cannot be found that the alleged act or omission was having any nexus relation with the official duty.

19. Thus, the objection raised by the learned counsel for the appellant is, therefore, overruled and we hold that the learned Trial Judge has rightly held that no sanction was required.

20. Now, on merit we are to examine whether the learned Trial Judge has recorded conviction based on proof beyond reasonable doubt or not. We find in order to prove the charges prosecution has brought as many as 10 witnesses. P.W.1, P.W.3, P.W.4, P.W.5., P.W.7 and P.W.10 are the eyewitnesses amongst them. The learned Trial Judge, in our view, has correctly appreciated the oral testimony of all those witnesses. As we go through the testimony of those witnesses we find as follows:

P.W.1, the son of the deceased has stated vividly how the incident took place. He has said, in his evidence, that at about 5 or 5.30P.M. on the fateful day he along with his deceased father Enamul Haque was waiting with a gunny bag containing wheat seeds for availing of a train to go to Barharowa. The appellant then approached his father and demanded of him for payment of money for nothing. His father refused to oblige him and therefore, there has been exchanged of words, which turned into heated altercation with abusive language, between the appellant and his deceased father so much so so he ultimately threatened him with dire consequences unless his demand was met by his father. His father refused to pay anything even on face of threat. Thereafter the accused being furious took out his rifle from his shoulder and opened fire from point blank range towards his father and then he having received his gun shot injury fell down on the ground. The appellant thereafter fired one more shot at his father. He attempted to rescue his father but then he was targeted by the appellant /accused with his rifle and he was afraid of and a few persons accompanying him advised to withdraw from the spot. Thereafter, he went to the Station Manager, P.W.2 to inform the incident. He along with the P.W.2 came and drew near place of occurrence and in spite of P.W.2 disclosing his identity as being Station Manager, the RPF personnel opened blank fire to disperse them. As such P.W. 1 and P.W.2 and the other persons could not succeed to reach near the body of his father. Thereafter he returned to his house and he informed the Prodhan of the local Gram Panchayat, one Sk. Najem Ali, being P.W.9. After sometime SDO, SDPO & officers of local Police Station rushed to the place of occurrence. Only on arrival of the aforesaid persons he was permitted to see his father and found him lying dead. Soon thereafter, the officers of Azimganj, Government Railway Police Station, reached at the place of occurrence. He then submitted an FIR with the Officer-in-Charge, Government Railway Police. Azimganj,

who assured him of taking action. The said officials removed the body of his father for post-mortem examination and after the same was done by PW 6 the dead body was handed over to him. He thereafter went to the Azimganj GRPS office after 8 or 10 days from the date of occurrence to ascertain the development of the case, however, he found no action was taken.

21. In the cross-examination, we noticed that his testimony could not be dented nor anything was brought out from his mouth to make us disbelieve his testimony. The learned Trial Judge did not disbelieve him. There has been no reason to disbelieve oral testimony of any of the other witnesses viz. P.W.3 P.W.4, P.W.5., P.W.7 and P.W.10 who were the residents of Tildanga local area and acquaintances of P.W.1. They corroborated and narrated the entire incident more or less with reasonable degree of variation and in the cross-examination they could not be rendered to be disbelieved. Indeed in the cross-examination we do not find any suggestion to those witnesses that they did not see the incident. Learned Trial Judge has also believed their testimony. This incident is also supported by the testimony of P.W.2 viz. the Station Manager. His evidence is very important in the sense that he is an independent person. We think that he is a truthful witness as he never tried to tell that he himself has seen the occurrence. In his evidence he has stated in details regarding appellant''s reaction when he reached there. He deposed that at that point of time he was the Station Superintendent of Tildanga Police Station. On that date at about 5P.M. to 5.30P.M. there was a firing on platform No. 1. He has said that he had heard it from the P.W.1. He has said that after completion of his duty on that date at 4P.M. he was at his railway quarter. P.W.1 came to him and told that his father was killed by the R.P.F. personnel by gun shot injury. He then went to see the dead body of his father and as such took a torch with him as he accompanied by P.W.1, was approaching platform No. 1 with a Railway green hand signal towards the dead body of the victim lying at west side of platform No. 1. They opened a blank fire having noticed their arrival. Therefore, he along with P.W.1 stopped there and he returned to the station building without proceeding further. Over phone he informed Sub Divisional Office, Sub Divisional Police Officer of Jangipur Sub Division, Officer-in-Charge Farakka, Divisional Commissioner, Railway Protection Force, Maldah, O.C., Government Railway Police Station, Azimganj & Jangipur, Officer-in-Charge, Railway Protection Force, Barharowa that a dead body was lying on plat form No. 1 of Tildanga Railway Station. S.D.C. & S.D.P.O. Jangipur, O.C. R.P.F. Barharowa, O.C. Farakka P.S. etc. came to the platform of Tildanga Railway Station. He testified further that these RPF did not even permit O.C. Farakka P.S. to come near to the place of occurrence on the contrary they opened blank fire. Only on arrival of SDO, RPF personnel allowed the P.W. 1, wife and children of the victim to see the dead body. This testimony could not be destroyed, in any manner, by the cross-examination. Indeed there has been no suggestion that those things did not happen. On the contrary, a suggestion was put to him that the accused sustained head injury and was forwarded to Maldah Railway hospital. However, he neither

denied such suggestion nor accepted such suggestion as he was not aware. In totality, his evidence is not only acceptable but also natural. The learned Trial Judge- in our view, correctly relied on his evidence as a strong corroborative value.

22. The Autopsy Surgeon, P.W.6, deposed in this case and proved the post-mortem report. He has narrated while conducting post mortem examination as follows:

1) One gun-shot injury over the left hand, fracture of little and ring finger;

2) One gun-shot injury over the anterior aspect of left forearm, wound of exit over the left deltoid muscle (upper part of the left arm) with fracture of humerus;

3) One gun-shot injury over the chest (entry) and exit over the back below -the right Scapula;

4) Pleura was fractured, the right lung was fractured and perforated.

He has said in his testimony as well as in his report while proving that death was ante-mortem and homicidal in nature.

23. In the cross-examination attempt was made to prove that he had no ability and skill of conducting post-mortem examination. Learned Trial Judge has taken note of his answer to cross examination in this respect and rejected suggestion of his lack of skill and ability, we feel, rightly so. As we read text and nature of report and notice his experience his skill and ability are beyond doubt. According to us, when the version of plethora of eye-witnesses could not be disbelieved, under any circumstances, about the factum with gunshot injury, disbelief of evidence of the Autopsy Surgeon hardly changes the nature and character in this case.

24. We are of the view and it is also settled position of law that opinion of an Autopsy Surgeon is not evidence in real sense of fact in issue but when such an opinion is accepted by the Court it assumes considerable significance as corroborative value of substantive evidence. It is proved beyond doubt by eyewitness there has been murder. It only remains to establish scientifically the cause of death, as such testimony of P.W.6 having been accepted by the Court proves the cause of death ante-mortem in nature and due to bullet injury. In this case we do not find any suggestion that death took place for any reason other than bullet, injury. The question is whether the bullet injury was sustained by the deceased accidentally or by the opening of fire by the appellant as has been alleged in this prosecution.

25. We have already observed that it has been proved beyond reasonable doubt that the appellant has no doubt opened fire and due to gun-shot bullet injury the father of the P.W.1 lost his life. The learned counsel for the appellant, Mr. Bhattacharya urges that why the learned Trial Judge has disbelieved D.W. who has categorically stated that the deceased along with other villagers of Tildanga Police Station came to pilfer the goods from wagon and at that time the appellant was

assaulted and attacked and sustained injury is unknown and without reason. We have carefully gone through the findings of the learned Trial Judge and has found that he has considered the same. As the question of belief and disbelief primarily rests on the learned Trial Judge because he had the occasion to see the demeanour of the witnesses we should not unjustly undertake this excessively. We do not find anvil substance of the submission that the learned Trial Judge has unjustly disbelieved D.W. as he has deposed that appellant was hospitalised, if so then why any document from the concerned hospital was not produced. We find simply no attempt was made to produce any such document. We are not really impressed with the argument that it was the duty of the Court to bring the same. According to us, if any alibi is taken by the defence burden lies upon him u/s 106 of the Evidence Act. His plea of alibi or any other plea or plea of any other fact having special knowledge can only be proved by the person who has taken u/s 106 of the Evidence Act. The learned counsel for the appellant thereafter suggested that all the witnesses are interested witnesses. The learned Trial Judge has rejected this contention. We also do so as we find P.W.9, Prodhan of the Gram Panchayat, has corroborated substantial portion of testimony of P.W.1, P.W.3, P.W.5 and P.W.7. Moreover, as we have said that P.W.2, being the Station Master, has corroborated the event that took place subsequent to killing of victim. This witness has no relationship with the victim. As because P.W. 1 happens to be son of the victim his evidence cannot be brushed aside. It is unnatural that a son will commit mistake to identify the assailant of his father. There are other R.P.F. personnel, then why he has singled out the appellant. Had his testimony is false then he could have implicated each and every one. He did not do so. P.W.3, P.W.4, P.W.5, P.W.7 and P.W.10 have stated what exactly they have seen while supporting P.W.1. Under such circumstances, there is no suggestion that other eye-witnesses were related to the deceased victim or P.W.1. Then the learned counsel for the appellant says that SDPO was not called as witness so case of the prosecution should be disbelieved. We simply negate this plea as the learned Trial Judge has correctly recorded that it is the quality of evidence not the quantity. It is not necessary that all the persons who happen to be there should be brought as witnesses. One witness out of several is good enough, if his testimony legally acceptable and believable. Moreover, it is not the case of the prosecution that SDO and SDPO were present at the time of occurrence. For corroboration, we do not feel everyone should be brought to put unnecessary weight in the evidence. Next it is said that the charges are vague. We have examined the charges but do not find any vagueness.

26. Therefore, we find quite substance in the submission of Mr. Goswami that the findings of the learned Trial Judge is absolutely just and proper as it could be on the given facts and circumstances and the evidence adduced. We, therefore, uphold the findings, and conviction of the learned Trial Judge as we do not find any reason to interfere with this. Accordingly, the appeal fails and the same is hereby dismissed.

Tapan Mukherjee, J.

I agree.