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**(1984) 09 CAL CK 0030**

**Calcutta High Court**

**Case No:** Criminal App. No. 61 of 1978

Dipak Singh

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** Sept. 21, 1984

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 34

**Citation:** 89 CWN 320

**Hon'ble Judges:** N.G. Chaudhuri, J; G.C. Chatterjee, J

**Bench:** Division Bench

**Advocate:** Balai Ch. Roy and N.N. Adhikary, for the Appellant; Mukti Moitra and Sova Banerjee, for the Respondent

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### **Judgement**

Gobinda Chandra Chatterjee, J.

This appeal arises out of the judgment of conviction passed in Sessions Trial Nos. 1 of December 1977 of the City Sessions Court at Calcutta. Two persons viz. Charangulia and Dipak Singh, stood as accused in that case. For the purpose of the present appeal the facts as alleged by the prosecution may be shortly summarised as follows : On 23rd August, 1976 at about 12-30 at dead of night the deceased Kashia was passing along Durga Charan Mitra Street, Calcutta. Durga Charan Mitra Street runs from West to East, linking Rabindra Sarani to the western side and Jatindra Mohan Avenue to the east. It is a narrow street less than five meters in width and on its way it projects small lanes on either side and Sonagachi Lane is one of such lanes proceeding towards north. On both sides of Durga Charan Mitra Street there are different shops, hotels and residential houses. The whole area covered by Durga Charan Mitra Street and Sonagachi Lane is usually known as red light area. The prosecution case is that when Kashia was moving along Durga Charan Mitra Street he was all on a sudden surrounded by 6/7 persons including Dipak (the present appellant) Haria Singh, Charangulia and some others. The surrounding persons assaulted Kashia by fists and blows. Then they dragged him towards the crossing of Durga Charan Mitra Street and Sonagachi Lane. On that cross in

g Dipak along- with others struck Kashia with knife and daggers resulting in bleeding injuries. Thereafter the culprits resolved to drag Kashia to a safer place viz. inside the Sonagachi Lane. Actually they dragged him there and all the culprits went inside that lane along with Kashia. Only Haria remained standing at the crossing. Soon after a rickshaw came over there and Haria managed to depute the Rickshaw puller inside that Lane. Sometime thereafter that Rickshaw puller was seen carrying the unconscious and heavily injured Kashia and moving towards Jatindra Mohon Avenue. At about 1-30 a.m. on the same night the dead body of Kashia was found lying on the Avenue adjoining Durga Charan Mitra Street. Police party reached the spot at about 2 a.m. Thereafter the dead body of Kashia was sent for postmortem examination. The statements of the witnesses were recorded on the same night. Towards the morning at, about 9.30 a.m. the I.O. came to the spot with a police dog Nothing however could be traced out. About one month thereafter Charangulia was arrested and about, one year thereafter the police submitted charge-sheet against Charangulia and Dipak along with some others. Charangulia, and Dipak stood their trial in the Court of Sessions before the City Sessions Court Judge in connection with trial No. 1 of 1977. In course of the trial both Charangulia and Dipak were found guilty of the offence u/s 302/34 I.P.C. and were sentenced to life imprisonment. Charangulia, so we are told is now serving out the sentence. He has not joined the present appeal. The instant appeal has only been filed by Dipak. Dipak's defence is that the occurrence as alleged by the prosecution did never take place at the crossing of Sonagachi Lane and Durga Charan Mitra Street, that Dipak had nothing to do with the occurrence and that not being able to find out any clue to the murder, the police implicated him with the help of some tutored witnesses,

2. The learned Advocate appearing for the appellant has assailed the prosecution case from start to finish characterising the same as absurd fantastic and got up. Let us now examine the prosecution case itself. There is no denying the fact that Kashia was murdered at the dead of night on 23.8.76. Kashia so it appears from the cross-examination of P. W. 12 Mritunjoy Das, was a drunkard. Nay, he would "some time over drink and would lie" on the streets". The whole area as already indicated is a red-light area, thickly populated by prostitutes, hotel-wallas and shop-keepers. Is Dipak a drunkard too? Was he a close associate of Kashia? Did the quarrel break out between Dipak and Kashia over Any monetary affair or over women flesh? The record of the case is all silent regarding all these legitimate, question with the result that we are completely cut off from the context or background of the case The postmortem report of the Doctor.(P. W. 19) proves to the hilt that there were as many as 14 injuries on the person of the deceased including nine deep incised wounds. This means and implies that Kashia was mercilessly beaten to death. The investigating Officer has not unfolded as to how and in what manner the quarrel between Dipak and Kashia saw the light of the day. If Dipak would have murdered Kashia in the manner as alleged by the prosecution then in all probability of the matter we would have got a glimpse of" their previous association and activities leading to the climax inside Sonagachi Lane, The prosecution case being thus shorn off its expected context sounds un-meaning and the same figures to us as

somewhat vague and unintelligible. Again it would transpire from the record that as many as 7 eye-witnesses were examined in this case. All of them however, had to be declared hostile by the prosecution excepting P. W. 15 Hiralal and P. W. 18 Anil Kumar Dey. Most of these witnesses it further appears are either hotelwallas themselves or are persons connected with the activities of the local hotels. The vicinity we may recall is inhabited by prostitutes as also by some ordinary residents. It is not very much clear why the I.O. picked and choose these hotel men exclusively as his P. Ws. The I.O. admitted in his cross-examination that the witnesses he examined were all connected with hotel affairs. P. W. 15 Hiralal gave out in his cross-examination that "police licence is required to run a Hotel". It has been argued on behalf of the appellant that the witnesses selected by the I.O. were all fear-stricken, that they did not see the occurrence at all and that only when they came before the Court that they found themselves relieved and naturally they turned hostile to the prosecution.

3. We have already indicated before that two witnesses P. W. 15 and 18 did not so turn hostile. The Trial Judge, it appears relied upon these two witnesses and convicted the accused appellant. It has been contended by Mr. Roy that the evidence of the two witnesses is not worthy of credence. Let us now examine this contention with regard to the materials on the record.

4. P. W. 15 is the owner of a local hotel styled as "New Royal Hotel" situate at 12, Durga Charan Mitra Street, His evidence is that on the night of 23 8.76 at about 12-30 a.m. he saw from his hotel room accused Dipak and Haria and others quarreling with Kashia. He saw Dipak and others assaulting Kashia by fists and blows on Durga Charan Mitra Street, from the blue print of the plan of the locale (Ext. 4/2) it transpires that it was not at all possible for the witness to see the incident by sitting within his hotel room, The further evidence of the witness is that Dipak and others had nothing in their hands at that time. He heard Dipak Haria etc. saying that Kashia should be taken inside the Sonagachi Lane i.e. to say to a safer place. So saying the culprits dragged Kashia to crossing of Sonagachi Lane where Kashia was struck by knives by Dipek Haria and others. Thereafter Kashia was further dragged inside the Sonagachi Lane. The evidence of these witnesses in our opinion is not worthy of credence for the simple reason that there was no light at all at the said crossing. The blue print of the map confirms this fact. The last line of cross-examination of PW 4, SI of Police is that there is no street light at the crossing of "Sonagachi "Lane and Durga Charan Mitra Street". In the concluding portion of his evidence in cross-examination Hiralal was constrained to admit that he could not have seen the occurrences at all if It was dark there. That it was all dark at that time was also virtually admitted by Hiralal when in his unguarded moment, he was constrained to admit in his cross-examination that he could not. see the complexion of the rikshaw puller because lights were off at that time. It is also the admitted evidence of P. W. 12 Mritunjoy that that the place was dark so much so that he could not see what arms the culprits were carrying at that time. The evidence of the other witness, P.W. 18 Anil Kumar Dey is somewhat different. He said that the accused persons were armed with daggers from the

very beginning. This witness did not see the culprits assaulting Kashia for he was so much fear stricken that he entered inside the hotel ail together and did not come out to see what happened in course of the quarrel. That is why in his examination in-chief he made it quite clear that he did not see any thing else The Public Prosecutor, it appears possibly put a leading question and managed to elicit from the mouth of the witness the expected answer that at the crossing of Sonagachi Lane and Durga charn Mitra Street.the accused person and Haria stabbed Kashia by knives or daggers".

5. We do not consider it safe at all to convict the- accused person on the basis of the inadequate evidence of the. two P. Ws. as aforesaid. None of the two witnesses is Credible. We find further that these two witnesses are completely ignorant as to what had exactly happened inside the Sonagachi Lane that night where according to the deceased was dragged As a matter of fact none of the prosecution witnesses has. disclosed us as to what had actually happened inside that gali. There are reasons to believe that most of the injuries had been inflicted there. It is here indeed that the victim was mercilessly and brutally beaten to death. But who struck him mercilessly and how?. The record of this case as completely silent on. this point.

6. We are thus prevented from knowing as to why the incident started and how the catastrophe ended ultimately, The beginning and the end of the prosecution story is thus shrouded in mystery. The defence indeed is right when it suggested, that the police could not unfold the mystery and that is why long one year after Dipak was implicated. If Dipak had really murdered Kashia in, the way as alleged by the prosecution then in all probability of the matter police would have arrested Dipak on the self-same night, for it appears that by. that very night examination of the local P. Ws. was completed by the I.O. From the evidence of the I. O. it would transpire-that he had to take the help of a tracer dog to find out the clue next morning but in vain. We do not know but perhaps the I.O. was trying to find" out the incriminating articles like knives and daggers from the houses of the local residents. Dipak is admittedly a local resident residing at Durga Charan Mitra Street.

7. Mr. Roy the learned-Advocate appearing for the accused has strongly criticized the blood seizure story of the prosecution by saying that the alleged blood of the victim could never have been seized successfully at 9-30 a.m. on the next day Mr. Roy has further submitted that the story was introduced to make the court believe that the acts of assault were really made at the crossing of Sonagachi Lane and Durga Charan Mitra Street and also inside Sonagachi Gali. Mr. Roy is substantially right For it was then rainy season For long 8 hours the blood would not remain so steady on the crossing and inside the thickly populated Sonagachi Lane in the fashion as "alleged by the prosecution. Moreover, it is difficult to understand as to why the blond could not be seized on the self same night when the examination of the witnesses could be Completed by5 p.m as admitted by P.W. 21 It is now clear form what has been stated so far that the prosecution case has not been satisfactory proved by the witnesses. Indeed there is no credible evidence on the record as to why how and in what manner the accused-appellant dragged Kashia up to

Sonagachi Gali causing severe injuries and culminating in his death at the red light area at 12.30 a.m. on 23.8.76. Where the prosecution has thus failed to unfold the beginning and end of the occurrence, where most of the prosecution witnesses have turned out to be hostile for some reason or other and where one or two prosecution witnesses have only obliged the prosecution and that too in a very half hearted and in-credible fashion as in this case the accused, in our opinion is entitled "to the so called benefit of doubt. In the result the appeal stands allowed on contest. The judgment of conviction and sentence passed by the learned. Sessions Judge in so far as this appeal is concerned is set aside. The appellant is found not guilty of the offence "under section 302/34 I.P.C. He is discharged from his bail bond and is set at liberty at once.

N.G. Chaudhuri, J.

I agree.