
(2001) 03 CAL CK 0038

Calcutta High Court

Case No: C.R.A. No. 417 of 1990

Samir Kumar Mondal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: March 21, 2001

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304, 323, 325, 334

Citation: (2001) 2 ILR (Cal) 400

Hon'ble Judges: Malay Kumar Basu, J; Basudeva Panigrahi, J

Bench: Division Bench

Advocate: Balai Roy and Ashim Roy, for the Appellant; Biplab Mitra, for the Respondent

Final Decision: Allowed

Judgement

Basudeva Panigrahi, J.

In this appeal conviction and sentence passed by the Additional Sessions Judge, Birbhum, Rampurhat in Sessions Trial No. 3 of August 1990 arising out of Sessions Case No. 112 of 1988 u/s 304 Part II of the Indian Penal Code directing the Appellant to undergo rigorous imprisonment for 10 years has been assailed by the Appellant Samir Kumar Mondal.

2. The Prosecution story has been depicted in course of trial is that on January 24, 1988 in the early morning when Gouri Bala Mondal, wife of the deceased was engaged in washing her utensils in the pond close to her house, her husband's elder brother accused Benoy Kumar Mondal (since acquitted) was cleaning the road with broom stick. At that time, some dust particles fell on the person of Gouri Bala, as a reason whereof, there was quarrel among her husband, two sons with the Appellant and his father.

3. At that time the Appellant was said to have brought a crowbar and struck on the head of Ajit Kumar Mondal, husband of P.W. 2, as a consequence whereof, father of P.W. 1 became unconscious and sustained bleeding injuries. He was taken first to

Mollarpur Primary Health Centre, but the Doctor who attended him, seeing his serious injuries, advised to shift him to Suri Sadar Hospital. Thereafter, the injured was removed to Suri Sadar Hospital, where he succumbed to the injuries.

4. On the next day, i.e. January 25, 1988 in the morning an First Information Report was lodged at Mayureswar Police Station as the place of incidence falls within its jurisdiction. On the basis of the said First Information Report, Mayureswar P.S. Case No. 10 dated January 25, 1988 was registered u/s 304 of the Indian Penal Code and immediately the police had swung into action. The Investigating Officer examined the eye-witnesses and prepared the sketch map.

5. In course of further investigation a crowbar and bamboo stick were seized from the house of the Appellant. An auto pay was conducted on the dead body of the injured Ajit Kumar Mondal, who was treated earlier in Mollarpur Primary Health Centre. After closure of investigation, charge-sheet was submitted under Sections 302/334, 325/34 and 323 of the Indian Penal Code against the accused Manik Mondal.

6. The learned Additional Sessions Judge, on resume of the evidence of prosecution was, however, inclined to convict the Appellant alone u/s 304 Part II of the Indian Penal Code, whereas the other accused persons were acquitted. Therefore, the Appellant being aggrieved by such conviction and sentence, has preferred this appeal.

7. Mr. Roy, learned Advocate for the Appellant has contended that in this case the prosecution story has to be altogether disbelieved, inasmuch as there has been unexplained delay in lodging the First Information Report. The occurrence is stated to have taken place at 6-30 a.m. on January 24, 1988 which can be collected from the evidence of P.W. 2 and P.W. 6. In the First Information Report it has been narrated that it has taken place in the morning of January 24, 1988. The time find date for filing the First Information Report at the police station was on January 26, 1988 at 9.45 a.m. Therefore, there has been about 27 hours delay in lodging the First Information Report, although the distance was only 18 Kilometers.

8. It has been further stated that the prosecution witnesses have not depicted the prosecution case in the manner and the circumstance in which it had taken place. The father of the Appellant Binoy Mondal is said to have received injury on the same day which was brought out from the evidence of P.W. 10, Dr. Mahammad Anowar AM, who treated the deceased as well as Benoy Mondal. In course of the evidence the prosecution has suppressed the injury said to have been sustained by Benoy Mondal. Therefore, the genesis of the prosecution case as narrated, should not be accepted.

9. It has been further contended that P. Ws. 1, 2, and 3 are only the family members and their evidence should not be accepted without seeking further corroboration from the independent witnesses. It is true that P.W. 4, Jagannath Banerjee, was

examined who claimed to have corroborated P. Ws. 1, 2 and 3. But since the Investigating Officer has examined him one month after the date of incident, his evidence cannot be accepted. The size of injury stated by P.W. 10 and P.W. 13 also appears to be discrepant and there is no explanation on the part of the prosecution as to how discrepancy occurred. In the above premises, the Appellant, therefore, should be acquitted.

10. Mr. Mitra, learned Advocate appearing for the Respondent has submitted that merely because there was delay in lodging the First Information Report from which it cannot be inferred that the prosecution story is altogether false. In this case P.W. 1 has lodged First Information Report as Mayureswar Police Station on January 25, 1988 at 9.45 a.m. Therefore, in this background, merely because of some delay in lodging First Information Report, it shall not raise any presumption regarding falsity of the prosecution case. From the evidence we gather that the incident was reported by the elder brother of P.W. 1 at Mollarpur Out post. It is said that no one from Mollarpur Out Post had visited the spot. It is curious to note that the diary alleged to have been maintained by Mollarpur Out Post regarding the incident had not been produced by the prosecution.

11. It is true that the prosecution case cannot be discarded only on the basis of delay in lodging the First Information Report. The Court will have looked to the other surrounding circumstance to ascertain its truth or otherwise prosecution story. Even there may be some delay in lodging the First Information Report, but the prosecution witnesses present a graphic picture of incident in court. In such case, the prosecution case cannot deserve an out-right rejection.

12. P.W. 2 in her testimony deposed that immediately hearing the altercation between herself and Benoy Mondal, her husband and two sons came to the place of occurrence. It is true that she deposed in court that the Appellant came straight and hit her husband with a sabal. She did not unfold the true story of prosecution that Benoy Mondal too sustained injuries, although he was undisputedly present at the spot. Merely because she was the wife of the deceased, her testimony does not deserve an out-right rejection. Since the genesis of the prosecution story was suppressed in the manner, that has been deposed in court, therefore, it is unsafe to rely on her testimony without seeking independent corroboration.

13. P.W. 3 who is one of the sons of P.W.2, has claimed to have gone to Mollarpur Out Post and narrated the incident which was recorded in the Mollarpur Out Post. He claimed that he did not inform Mayureswar Police Station on the next morning. From his evidence it has further transpired that he was not certain to have told the Investigating Officer in the presence of P.W. 4, Jagannath Banerjee. This witness also does not speak about the injury on the person of Benoy Mondal. The evidence of P.W. 4 also does not inspire any belief, inasmuch as he was not examined immediately after the incident, but examined after one month of the incident, which was admitted by the Investigating Officer who said to have recorded his statement

during his second visit.

14. It is brought out from evidence that P.W. 4 has stated before the Investigating Officer that the eldest son of Benoy Mondal, Manik, hit the father of P.W. 1, as a result of which he fell on the ground. Mr. P. Sen, P.W. 12, who was the Sub-Inspector of Police attached to Mayureswar Police Station had unequivocally admitted that P.W. 4 has told him that Manik, the eldest son of Benoy Mondal, hit Ajit Mondal by lathi. It may be a minor contradiction as P.W. 4 has stated before the police that Manik has assaulted the deceased on his head. A separate story has advanced in Court.

15. We find there is a discrepancy between the injuries and also size of their injuries as deposed by P.W. 10, Dr. Mahammad Anower Ali, who was attached to Mollarpur Primary Health Centre and also P.W. 13, Dr. S. Nath, who conducted the autopsy on the dead-body. P.W. 10 has deposed that the deceased received injuries, size of which $11\frac{1}{2}/4"$ X Vz X $1/6\text{th}"$ X Skull deep (2) transverse in direction. P.W. 13 in Post Mortem report described that he noticed one incised wound (stitched) on left lateral aspect of the scalp and on opening of the stitched it was measuring 2Vz X $2"$ X $2"$, (2) fracture of left lateral aspect of the frontal bone. We, therefore, find that there are different sizes of injuries described by both the medical officers. From the testimony of ocular witnesses we find that there is only one assault given on the head of the deceased. In that case, how could there be two injuries, which has not been explained by the prosecution.

16. Therefore, in the above conspectus of the case, on considering the evidence of ocular witnesses and medical evidence, since there are so many omissions and contradictions in course of hearing, it would be unsafe to rely upon the testimony of P. Ws. 1 to 4. Accordingly, we acquit the Appellant from the charges u/s 304 Part II of the Indian Penal Code under benefit of doubt, as the prosecution was unable to prove the case beyond the shadow of all reasonable doubts.

17. In the result, the appeal succeeds. The conviction and sentence passed by the learned Additional Sessions Judge are, therefore, set aside.

Bail Bond is, therefore, discharged.

Malay Kumar Basu, J.

18. I agree.