
(2014) 09 CAL CK 0018

Calcutta High Court

Case No: C.R.A. 642 of 2011

Bazler Rahaman Munsif

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Sept. 5, 2014

Acts Referred:

- Penal Code, 1860 (IPC) - Section 308, 323, 324, 326, 34

Citation: (2014) CriLJ 4916

Hon'ble Judges: Joymalya Bagchi, J

Bench: Single Bench

Advocate: Tapan Dutta Gupta, Santimoy Bhattacharya and Kamalesh Chandra Saha,
Advocate for the Appellant; Amartya Ghosh, Advocate for the Respondent

Final Decision: Partly Allowed

Judgement

Joymalya Bagchi, J.

The appeal is directed against the judgment and order dated 22/23.11.2011 passed by the learned Additional Sessions Judge, Fast Tract Court No. 5, Barasat (North) 24 Parganas convicting the appellants for commission of offence punishable u/s 308/323/324 of the Indian Penal Code and directing them to suffer rigorous imprisonment for seven years with fine of Rs. 5,000/- each, in default to suffer further imprisonment for six months for the offence punishable u/s 308 of the Indian Penal Code, to suffer rigorous imprisonment for six months for the offence punishable u/s 323 of the Indian Penal Code and to suffer rigorous imprisonment for one year for offence punishable u/s 324 of the Indian Penal Code, all the sentences to run concurrently.

2. The prosecution case, as alleged, against the appellants is as follows:-

On 17.10.1996 one Md. Raijul Islam (P.W. 1) lodged a complaint alleging that on the selfsame date at about 4/4.30 p.m. when his brother-in-law Md. Khatib Munshi (P.W. 2) was ploughing his land at Uttar Math some radish plants in the adjoining land of

appellant no. 1 were allegedly destroyed by his cattle. Over this issue, there was an altercation and the appellants assaulted him and appellant no. 1 assaulted the victim Md. Khatib Munshi by a da causing incised injuries on his hand, throat and other parts of the body. The victim was taken to hospital and treated. On the basis of such complaint, first information report being Barasat P.S. Case No. 590 dated 17.10.1996 u/s 326 of the Indian Penal Code was registered for investigation. In conclusion of investigation charge sheet was filed against the appellants u/s 326/308/34 of the Indian Penal Code.

3. The case being a sessions triable one was committed to the Court of Sessions, North 24-Parganas and transferred to the Court of the Additional Sessions Court, Fast Tract Court, Barasat, North 24-Parganas for trial and disposal.

4. Charges were framed against the appellants u/s 323/324/308/34 of the Indian Penal Code. The appellants pleaded "not guilty" and claimed to be tried.

5. In course of trial, prosecution examined as many as 10 witnesses and exhibited a number of documents. In conclusion of trial, learned Additional Sessions Judge, Fast Tract Court No. 5, Barasat (North) 24 Parganas by judgment and order dated 22/23.11.2011 convicted the appellants for commission of offence punishable u/s 308/323/324 of the Indian Penal Code and directed them to suffer rigorous imprisonment for seven years with fine of Rs. 5,000/- each, in default to suffer further imprisonment for six months for the offence punishable u/s 308 of the Indian Penal Code, to suffer rigorous imprisonment for six months for the offence punishable u/s 323 of the Indian Penal Code and to suffer rigorous imprisonment for one year for offence punishable u/s 324 of the Indian Penal Code, all the sentences to run concurrently. Hence, the present appeal.

6. Mr. Tapan Dutta Gupta and Mr. Kamalesh Chandra Saha learned counsels appearing for the appellants submitted that there was absolutely no evidence as to any overt act committed by appellant nos. 2, 3 and 4. It was further submitted that there no seizure of weapon of assault, namely, da. It was also submitted that there was no seizure of wearing apparels and no chemical examination of bloodstained earth seized from the place of occurrence. No sketch map of the place of occurrence was prepared during investigation and the hospital records of Barasat Hospital were not seized. It was also submitted that P.W. 7 stated that he has deposed for the first time in Court.

7. Mr. Amartya Ghosh, learned junior standing counsel appearing for the State submitted that the appellants in a body had assaulted the victim P.W. 2 and there was multiple injuries on the victim which is proved by medical evidence. Hence, the appellants have been rightly convicted and sentenced.

8. P.W. 1 is the first informant of the case. He stated that on 17.10.1996 about 4/4.30 p.m. P.W. 2 was ploughing filed at Uttat Math. The appellants had land beside the land of P.W. 2. The cattle of P.W. 2 damaged therein radish plants. Over such issue

there was dispute between the appellants and P.W. 2. The appellant no. 1 hit P.W. 2 with a da. P.W. 1 was planting cabbage and was about 50 feet away. Hearing the hue and cry he went there. The victim was taken to Barasat Hospital. He proved the first information report. The police seized bloodstained earth from the place of occurrence. He proved his signature on the seizure list.

9. P.W. 2 is the victim. He stated that on 17.10.1996 at about 4/4.30 p.m. while he was ploughing land his cattle had damaged the radish plants on the land of appellant no. 1. The appellants raised objection and started assaulting him. Appellant no. 1 hit with a da causing injuries on his throat, chest and finger. He was treated at Barasat Hospital and thereafter R.G. Kar Hospital where he was admitted for 62 days.

10. P.W. 3 is the brother-in-law of the victim. When he came to the place of occurrence he saw the appellants running away. He stated that appellant no. 1 hit P.W. 2 with a da and others also assaulted the victim. The victim was taken to Choto Jagulia Hospital, therefrom Barasat Hospital and thereafter to R.G. Kar Hospital where he was treated. In cross-examination, he stated that he did not see the incident.

11. P.W. 4 is a neighbour. He stated that he was working in his land situated near the place of occurrence at the relevant time. Hearing noise he came to the place of occurrence. They found the appellants were running away and the victim was lying on the field. The victim was taken to Choto Jagulia Hospital and thereafter to Barasat Hospital and then to R.G. Kar Hospital for treatment. He put his signature on the seizure list. In cross-examination, he could not say the khatian number and plot number of the land where he was working.

12. P.W. 5 is another agriculturist. He had land at Uthardanga. Hearing hue and cry he came to the place of occurrence and found the appellants assaulting P.W. 2. The appellant no. 1 had assaulted him on his hand, neck and chest. The victim was taken to Jagulia Hospital and thereafter to Barasat Hospital and R.G. Kar Hospital for treatment. In cross-examination he stated that the place of occurrence was 200 meters from his land.

13. P.W. 6 is a relation of P.W. 2. He corroborated the prosecution case.

14. P.W. 7 is a cultivator. He saw the appellant no. 1 assaulting the victim. He removed the victim to hospital.

15. P.W. 8 is the doctor who treated the victim at R.G. Kar Hospital. He noted cut injury on right side of chest, right side of neck and on right finger and the wounds had been dressed at Barasat Hospital.

16. P.W. 9 received the complaint and drew the first information report.

17. P.W. 10 is the Investigating Officer of the case. He submitted the charge sheet.

18. An analysis of the prosecution evidence, as aforesaid, show that on the fateful day i.e. on 17.10.1996 about 4/4.30 p.m. P.W. 2 was ploughing his land. While he was ploughing, his cattle damaged the radish plants on the land of appellant no. 1. As a consequence, an altercation ensued between the appellants on one side and P.W. 2 on the other side. In the course of altercation, appellant no. 1 assaulted the P.W. 2 with a da causing incised injuries on his neck, chest and hand. It has been argued that the da has not been seized. It has also been argued that the wearing apparels of the victim were not seized or sent for chemical examination. It has also been argued that bloodstained earth seized from the place of occurrence was not sent for chemical examination.

19. I find that the evidence of the injured witness P.W. 2 is corroborated by other witnesses in the instant case. Ocular version of P.W. 1 also finds corroboration from the medical evidence of P.W. 8. From such evidence it is clear that P.W. 1 sustained cut multiple injuries on his person at the place of occurrence caused by a sharp cutting weapon. In view of such consistent evidence, non-seizure of da cannot be said to be fatal to the prosecution case. Moreover, one cannot lose sight of the fact that da is a common instrument of cutting used by cultivators and agriculturists. Hence it is most likely that appellant no. 1 was armed with a da and in course of altercation used it to assault the victim. Other aspects of remissness of investigation, namely, non-seizure of wearing apparels or failure to send bloodstained earth for chemical examination would not affect the credible version of the injured witness (P.W. 2) when it is supported by medical evidence (P.W. 8).

20. The next question is who are authors of such injuries on the victim. It is alleged that the appellants entered into an altercation with P.W. 2 over damage of radish crops in the field of the appellant no. 1. It is specific evidence of all the witnesses including P.W. 2 that appellant no. 1 hit him on the hand, neck and chest. Injuries found on person of P.W. 2 by P.W. 8 also corroborates such version. There is no specific role attributed to the appellant nos. 2, 3 and 4. It is true that they were present at the place of occurrence and participated in the altercation. However, allegation that they also assaulted is not corroborated by medical evidence inasmuch as no other injury apart from the injuries caused by appellant no. 1 when he attacked P.W. 1 with a da is coming out from the medical evidence.

21. In the absence of any overt act attributed to appellant nos. 2, 3 and 4 and bearing in mind the fact that there was an altercation between the parties it is difficult to attribute a common intention to assault the victim upon the said appellants, I also find that there is no evidence that appellant nos. 2, 3 and 4 were armed. Hence, prosecution case is not proved beyond reasonable doubt that the appellant nos. 2, 3 and 4 shared common intention with appellant no. 1 to assault the victim. Therefore, I am inclined to extend benefit of the doubt to appellant nos. 2, 3 and 4. Appellant nos. 2, 3 and 4 are accordingly acquitted of all the charges levelled against them. However, in view of the consistent ocular evidence of assault

by appellant no. 1 upon the victim which is supported by medical evidence, I uphold the conviction of appellant no. 1.

22. Coming to the issue of sentence, I find that the incident was not a premeditated one and had occurred on the spur of the moment in the course of an altercation on the ground that the cattle of P.W. 2 had damaged the radish plants in the field of appellant no. 1. Appellant no. 1 has no criminal antecedents. Accordingly, I reduce sentence imposed upon the appellant no. 1 in respect of offence punishable u/s 308 of the Indian Penal Code and direct that he shall suffer rigorous imprisonment for four years and pay fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for six months more in place of the sentence imposed by the trial Court. Other sentences imposed upon the appellant no. 1 on score of section 323 of the Indian Penal Code and section 324 of the Indian Penal Code respectively shall remain same. All the sentences shall run concurrently.

23. The appeal is allowed to the aforesaid extent. Appellant nos. 2, 3 and 4 are discharged from their respective bail bonds.

24. Copy of the judgment along with lower court records be sent down at once.