

(2014) 11 CAL CK 0063
Calcutta High Court
Case No: C.R.A 691 of 2006

Dilip Saha

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: Nov. 20, 2014

Acts Referred:

- Arms Act, 1959 - Section 25(1)(a), 25(I)(a), 27, 35
- Criminal Procedure Code, 1973 (CrPC) - Section 164, 428
- Penal Code, 1860 (IPC) - Section 307, 320, 323, 326, 34

Citation: (2015) 1 CHN 12

Hon'ble Judges: S. Chatterjee, J; Nishita Mhatre, J

Bench: Division Bench

Advocate: Partha Sarathi Bhattacharyya, Advocate for the Appellant; Pawan Kumar Gupta, Advocate for the Respondent

Judgement

Samapti Chatterjee, J.

The appellants preferred the instant appeal assailing the Judgment and Order of conviction passed in Sessions Trial No. 6(2) 2004 by the Learned Sessions Judge, 3rd Fast Track Court, Malda on 4th day of September, 2006 convicting the appellants/petitioners under Sections 307/ 450/ 323/ 34 of the Indian Penal Code. They are sentenced to suffer Rigorous Imprisonment for 10 (ten) years each and to pay a fine of Rs. 1,000/- each in default to suffer 1 (one) year Rigorous Imprisonment each for committing the offence punishable under Sections 307/ 34 of the Indian Penal Code.

The convicts are also sentenced to suffer Rigorous Imprisonment for 5 (five) years each and a fine of Rs. 500/- each in default to suffer 6 (six) months Rigorous Imprisonment each for committing offence punishable under Section 450/ 34 of the Indian Penal Code and are also sentenced to suffer another Rigorous Imprisonment for 6 (six) months each and a fine of Rs. 500/- each in default to suffer 1 (one) month Rigorous Imprisonment each for committing the offence punishable under Sections

323/ 34 of the Indian Penal Code.

2. The case made out by the prosecution may be summed up thus.

On 12.10.1999 Tuesday in the night around 2 a.m. a hue and cry was heard from the side of the house of Rampukar Paul who happens to be the husband of the F.I.R. maker's sister Reshmi Paul and the FIR maker Kusmi Debi Paul came to know from her sister Reshmi Paul that at about 1.30 a.m. suddenly brick bats were thrown towards their house as a result of which Reshmi Paul and her husband, the victim Rampukar Paul woke up and they further noticed two persons. On seeing them Rampukar Paul who attempted to apprehend them and at that juncture shot was fixed aiming at him as a result of which Rampukar Paul received bullet injury and fell down. The local people removed him to Malda Sadar Hospital and also got him admitted there for treatment. It is alleged in the written FIR that the miscreants had attacked the victim (Rampukar Paul) with a motive to kill him. On the basis of the written FIR police started Gazole P.S. Case No. 166/99 dated 12.10.1999.

Police took up investigation and arrested the accused persons and after completion of investigation police submitted charge-sheet against the aforesaid three accused persons namely 1. Dilip Saha, 2. Rintu Saha and 3. Sukdeb Mondal all under Sections 449/ 326/ 307/ 323/ 34 of the Indian Penal Code read with Section 25(1)(a)/ 27/ 35 Arms Act and accordingly trial started and after completion of trial Learned Sessions Judge convicted the appellants as aforesaid.

3. In course of trial the prosecution examined as many as 17 (seventeen) witnesses.

P.W.1, the neighbour in his evidence stated that he heard a loud cry from the house of Rampukar Paul. Hearing the same he rushed there and saw many people assembled there. He also found that some persons entered the house of Rampukar Paul by breaking wall of the room. He further deposed that he along with other persons found that Rampukar was lying in the varandah with the bleeding injury. Then the P.W.1 along with others sent Rampukar to Malda Sadar Hospital where he was admitted. There Rampukar told that miscreants fired at him and he disclosed the names of the miscreants as Rintu Saha, Dilip Saha and Sukdeb Mondal. They all are the villagers of that village.

4. P.W.2, was the sister of Rampukar's wife who in her evidence stated that she heard a firing sound from the house of Rampukar Paul. Hearing the sound she went to the Rampukar's house and saw that Rampukar was lying on the varandah with bleeding injury at his chest. She further deposed that her sister, Rampukar's wife Reshmi Paul told her that 3 (three) people came to their house and hit a blow by wooden handle of the gun on her face and at the time Rampukar tried to catch hold of those persons, then the assailants fired at Rampukar. She further deposed that P.W.2 took her sister to Malda Sadar Hospital with serious injury. P.W.2 narrated the facts to the police by filing written FIR which was scribed by Narendranath Sarkar at her instruction.

5. P.W.3 was the star witness as well as the injured victim. In his evidence he stated that he along with his wife and son were sleeping in the varandah. Somebody threw bricks on the tiled shed of the house. Then he woke up and saw that Rintu Saha and Sukdeb Mondal were fleeing away. The P.W.3 ran after them to catch hold of them, then Dilip Saha came there and fired at him. As a result P.W.3 fell down. He further deposed that he received bullet injury on the right side of his chest. Blood was oozing out from the said injury and thereafter he became unconscious.

6. P.W.4 was the wife of P.W.3 and also an injured person. She stated in her evidence that she along with her husband and son was sleeping in their varandah. Three persons entered into their house. Her husband caught hold of Rintu and Sukdeb then Dilip Saha fired at her husband and her husband fell down. When P.W.4 tried to restrain them then Dilip hit her by wooden handle of the gun on her face causing bleeding injury. She further deposed that she and her husband were taken to the hospital and they were admitted there. She further deposed that many people along with her sister P.W.2 came to the place of occurrence where she narrated the facts. She further deposed that police came to the hospital and also to their house. She told all the facts to the police. Police took her blood-stained clothes. Police also inspected the removed portion of bricks on the wall and the wooden gate.

7. P.W.5 was the neighbour who was declared hostile by the prosecution.

8. P.W.6 was the neighbour who in his evidence stated that after hearing a cry he went to the house of Rampukar Paul. He saw that Rampukar was lying with bullet injury on his chest. He also noticed that his wife P.W.4 was also received a bleeding injury on her face. He further deposed that P.W.4 was disclosed that she was hit by the wooden handle of a pistol. Then P.W.6 and others took injured Rampukar and his wife to Malda District Hospital where Rampukar disclosed that accused Sukdeb, Rintu and Dilip entered into their house and when he tried to catch hold of Sukdeb and Rampukar at that time Dilip fired at him. Rampukar also told to P.W.6 that Dilip struck by the wooden handle of the pistol on the face of his wife. P.W.6 further stated in his evidence that he told the Investigating Officer that Rampukar told him that at his house he caught hold of Rintu and Sukdeb. At that time Dilip fired at him from the backside.

9. P.W.7, scribe of the FIR and brother of P.W.6 stated in his evidence that he heard a sound like fire cracker and thereafter he heard a cry of Rampukar's wife. After hearing the same he went to the house of Rampukar and saw Rampukar with bleeding injury. His wife P.W.4 also received injury on her face. They were taken to hospital. He wrote the FIR as instructed by P.W.2.

10. P.W.8 was the neighbour and declared hostile by the prosecution.

11. P.W.9 was the neighbour who in his evidence stated that after hearing a hue and cry he woke up from his sleep and went to the scene of occurrence and he saw Rampukar was lying on the varandah with injury and he also saw his wife also had

bleeding injury on her face. The P.W.9 along with others took Rampukar and his wife to the Malda Sadar Hospital. At that time Rampukar was conscious and he further deposed that he heard that there was a dacoity at the house of Rampukar and for that they received injuries.

12. P.W.10 was the neighbour.

13. P.W.11 was the Doctor who examined the victim Rampukar Paul. He stated in his evidence that he attended victim Rampukar Paul on 12.10.1999, 15.10.1999, 16.10.1999 and 20.10.1999. He further deposed that if the injury was not medically treated it could have caused death to the victim. Entry of the bullet was from backside, left of the spine and exist through the right side of the junction of the mid chest.

14. P.W.13 was the staff of the hospital and also the seizure list witness of Hawaii Chappal.

15. P.W.14 was the staff of hospital and also the seizure list witness.

16. P.W.15 was the first Investigating Officer who in his evidence stated that he investigated the Gazole P.S. Case No. 166 of 1999 on 12th October, 1999 under Sections 449/ 320/ 307/ 323/ 34 of the Indian Penal Code along with 25(I)(a)/ 27/ 35 of Arms Act. He also prepared the sketch map of the place of occurrence along with index and examined witnesses. He arrested the three accused persons namely Sukdeb Mondal, Rintu Saha and Dilip Saha and forwarded them to the Court of learned SDJM, Malda. He examined P.W.5 who told him that on 12th October, 1999 at about 2 a.m. P.W.5 after hearing the sound of firing went to the house of Rampukar Paul and saw that Rampukar Paul was lying with bleeding injury. He told P.W.15 that the accused persons came to the house of Rampukar and they fired at Rampukar and injured his wife also. He also examined Subhas Saha who told that after hearing the sound of fire he went to the house of Rampukar at 2 a.m. on 12th October, 1999 and saw that Rampukar got bleeding injury and his wife also got bleeding injury on her face. The said Subhas Saha also disclosed to P.W.15, the Investigating Officer of the case, that they took injured Rampukar and his wife to the Malda Sadar Hospital.

17. P.W.16 was the second Investigating Officer who also prepared sketch map of the place of occurrence with index submitted charge-sheet under Sections 449/ 326/ 307/ 34 of the Indian Penal Code and also under Sections 25(I)(a), 27/ 35 of the Arms Act against the accused persons namely Dilip Saha, Rintu Saha and Sukdeb Mondal. He also examined one Harendranath Sarkar.

18. P.W.17 was the Judicial Magistrate who in his evidence stated that he examined one Reshmi Paul, P.W.4 wife of victim Rampukar Paul under Section 164 Cr.P.C. He also recorded the statement of victim Rampukar Paul under Sections 164 Cr.P.C.

19. Mr. P.S. Bhattacharya appearing for the appellants stated that testimonies of the witnesses are full of contradictions and discrepancies and were not corroborating with the FIR.
20. Mr. Bhattacharya further contended that P.W.1 in his cross examination stated that he did not tell the Investigating Officer that victim Rampukar disclosed the three names of the miscreants as Rintu Saha, Dilip Saha and Sukdeb Mondal. Furthermore, he urged that in the FIR only two names were mentioned, not three.
21. Mr. Bhattacharya learned Advocate further contended that P.W.3, star witness and also the injured victim stated in his evidence that blood was oozing out from his injury and he became unconscious. Therefore, it was not possible for the P.W.3 to make any attempt to catch hold of accused Rintu Saha and Sukdeb Mondal as he became unconscious. Therefore, the Court should not give any weightage to the testimony of P.W.3.
22. Mr. Bhattacharya further urged that though P.W.4, another injured victim (wife of P.W.3) in her evidence stated that three persons entered into their house when she and her husband and son were sleeping in varandah. Her husband tried to catch hold of Rintu and Sukdeb then Dilip Saha fired at her husband and as a result her husband fell down. But in her statement recorded under Section 164 Cr.P.C before the Magistrate she only explained how she sustained injury on her face but nothing was mentioned regarding the injury sustained by her husband. Therefore, the testimonies of the witnesses are full of contradictions and should not be given any credence by the Hon"ble Court.
23. Mr. Pawan Kumar Gupta learned Advocate appearing for the State contended that the testimonies of P.Ws corroborated with the FIR and also with the Doctor's evidence. Therefore, there were no discrepancies, loosends, lacunae in respect of the prosecution case and the conviction given by the learned Court below should be affirmed by this Hon"ble court.
24. Considering the rival submissions there cannot be any dispute that the victim Rampukar Paul and his wife Reshmi Paul sustained bleeding injury on their persons. Now the question is whether the prosecution has been able to connect the present accused with the alleged crime.
25. Let us now examine/assess the evidence on record to ascertain whether the appellant is at all connected with the alleged crime.
26. After carefully going through the evidence both oral as well as documentary we find that the testimonies of all the witnesses corroborated with the FIR and also with the Doctor's evidence. Each and every witnesses in their evidence stated that Rampukar Paul's wife P.W4 got bleeding injury on her face by accused Rintu Saha and Sukdeb Mondal and when Rampukar Paul tried to catch hold of accused Rintu and Sukdeb when they were fleeing away then accused Dilip Saha fired at him from

behind as a result he sustained bleeding injury on his chest which was corroborated with the evidence of Doctor. The Doctor P.W.11 in his evidence stated that on 12.10.1999, 15.10.1999, 16.10.1999 and 20.10.1999 he attended and treated Rampukar Paul. He further deposed that there was wound of exit which is shown by a sketch and if the injured was not medically treated it might have caused death to him. The entry of the bullet was from the backside just left of the spine and exist just through the right side of the junction of the mid chest.

27. Therefore, considering the rival submissions and also considering the evidence on record we have no hesitation to hold that the prosecution has not been fully able to prove the charge punishable under Section 307 read with Section 34 of the Indian Penal Code against the accused persons, namely Dilip Saha, Rintu Saha and Sukdeb Mondal but the charge punishable under Section 326 read with Section 34 of the Indian Penal Code should be imposed against accused Dilip Saha for causing grievous hurt by dangerous weapon to the victims not amounting to an attempt to murder. Therefore, we have no hesitation to hold that the accused Dilip Saha is guilty of offence punishable under Section 326 read with Section 34 of the Indian Penal Code and is sentenced to suffer 10 years Rigorous Imprisonment. He is also sentenced to suffer Rigorous Imprisonment for 10 years for committing offence punishable under Section 450 read with Section 34 of the Indian Penal Code.

28. Accused Rintu Saha and Sukdeb Mondal are sentenced to suffer 1 (one) year rigorous imprisonment for committing offence punishable under Section 323/ 34 of the Indian Penal Code. They are also directed to pay a fine of Rs. 5000/- each to the victim Reshmi Paul.

29. The sentence imposed on Dilip Saha shall run concurrently.

30. Period of conviction during trial investigation and inquiry undergone by the convicts 1) Dilip Saha, 2) Rintu Saha and 3) Sukdeb Mondal be set off in terms of Section 428 Cr.PC from the total period of substantive imprisonment imposed upon them.

31. The appeal thus stands partly allowed.

32. The office is directed to send the lower Court record at once.