

**(2014) 09 CAL CK 0129**

**Calcutta High Court**

**Case No:** C.R.A. No. 160 of 2010

Kedar Nath Jaiswal

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision:** Sept. 4, 2014

**Acts Referred:**

- Arms Act, 1959 - Section 25, 27
- Penal Code, 1860 (IPC) - Section 307, 324, 34, 394

**Citation:** (2014) CriLJ 4969

**Hon'ble Judges:** Joymalya Bagchi, J

**Bench:** Single Bench

**Advocate:** Debojyoti Das, Advocate for the Appellant; Sabyasachi Banerjee, Advocate for the Respondent

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### **Judgement**

Joymalya Bagchi, J.

The appeal is directed against the judgment and order dated 25/26.02.2010 passed by the learned Additional District and Sessions Judge, Fast Track III, Howrah convicting the appellant and one Md. Samim for commission of offence punishable under section 324/ 34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for three years with a fine of Rs. 10,000/-, in default to suffer simple imprisonment for four months more. The prosecution case, as alleged, against the appellant and Md. Samim is as follows:-

One Madhu Dasgupta (P.W. 1) lodged a written complaint before O.C., Shalimar Police Station. That on 09.11.2006 he was travelling in the third compartment of MH 140 Midnapur-Howrah local train. He had boarded that train at 10.05 p.m. from Mechada railway station. Another passenger, namely, Nanda Kishor Singh (P.W. 3) had also boarded from Mechada. The train left Santragachi Station at about 11.15/11.20 p.m. Three miscreants came to the compartment before the train reached Ramrajatala. One of the miscreants who was carrying pistol threatened

them and another miscreant carrying knife came towards him and assaulted him resulting in injury on his head and left thumb. Rupees 5,000/- and a mobile phone was taken away. Another co-passenger, namely, Pankaj Bhattacharya (P.W. 4) objected to the violent acts of the miscreants to which the miscreants opened fire from the pistol but fortunately the bullet passed through the window of the train and as Pankaj Bhattacharya pushed away the pistol he was also assaulted. The miscreants jumped from the train to escape but the appellant sustained injury on his leg and head and was caught by Pankaj Bhattacharya and other co-passengers Nanda Kishor Singh, Bishnath Chatterjee and Tarak Chatterjee sustained bleeding injuries on their person. On questioning the appellant admitted that he was accompanied by Md. Samim of Shibpur. On the basis of written complaint Shalimar GRPS Case No. 24/06 dated 10.11.2006 under section 394/ 307 of the Indian Penal Code with section 25/ 27 of Arms Act was registered for investigation. In conclusion of investigation charge-sheet was filed against the appellant and Md. Samim under section 394/ 307 of the Indian Penal Code read with section 25/ 27 Arms Act.

2. The case, being a sessions triable one, was committed to the Court of Sessions, Howrah, and transferred to the Court of the Additional Sessions Judge, Fast Track III, Howrah for trial and disposal.

3. Charges were framed in the instant case under section 394/ 307/ 34 of the Indian Penal Code. The appellant and co-accused pleaded "not guilty" and claimed to be trial. In the course of trial, the prosecution examined 13 witnesses and exhibited a number of documents. The defence of the appellant was one of innocence and false implication. In conclusion of trial, learned Judge by judgment and order dated 25/26.02.2010 convicting the appellant and Md. Samim for commission of offence punishable under section 324/ 34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for three years with a fine of Rs. 10,000/-, in default to suffer simple imprisonment for four months more. Hence, the appeal at the behest of the appellant.

4. Mr. Das, learned counsel appearing for the appellant submitted that the appellant was identified for the first time in Court and there was no test identification parade conducted during investigation. Knife seized in the case cannot be said to be weapon of assailant. It was not identified by the witnesses and there was no labelling of the seized knife at the time of seizure. He further submitted that the evidence of the prosecution witnesses is most artificial and does not inspire evidence. He accordingly prayed for acquittal of the appellant.

5. Mr. Banerjee, learned Additional Public Prosecutor appearing for the State submitted that appellant was caught red handed at the spot by P.W. 4 and others and was handed over to the police after his identity was disclosed. Hence, question of holding test identification parade became into insignificant. He submitted that the evidence of the prosecution witnesses, particularly, P.Ws. 3 and 4 established the prosecution case beyond reasonable doubt. He accordingly prayed for dismissal

of the appeal.

6. P.W. 1 is the de facto complainant of the instant case. P.Ws. 2, 3 and 4 were the co-passengers when the incident occurred. P.W. 4 is also injured witness. P.Ws. 5, 6, 7, 8, 9, 10 and 12 are police personnel who had been to the place of occurrence on the date of incident. P.W. 11 is the doctor who examined the injured person, including the appellant after the incident. P.W. 13 is the Investigating Officer of the case who deposed regarding the seizure of articles, preparation of sketch map. He deposed relating to the seizure of knife which was seized in the presence of the P.Ws. 1, 4 and 5. P.W. He also submitted the charge-sheet in the instant case.

7. P.W. 1 has proved first information report. However in his deposition he stated that he was assaulted and he sustained injury while he was sleeping and was unable to identify the appellant.

8. P.W. 2 also failed to identify the appellant and other accused person. P.Ws. 3 and 4 are most vital witnesses in the case.

9. P.W. 3 stated that he boarded the train at Mechada. The train was initially crowded. When the train left Santragachi railway station there was only five passengers in the compartment, two of them were sitting in the compartment and two were sleeping and another passenger was sitting far away in the same compartment. When the train was leaving Santragachi two/three persons boarded the train. The person who was sitting was also assaulted with knife by one of the person who boarded the train and cash money and mobile phone from that passenger was taken away. One of the miscreants had pistol who came towards P.W. 3 and fired upon the person who was sitting beside him. He ducked below the seat to save himself. Bullet passed over him. The other miscreant was carrying a knife came towards them and when he tried to attack with knife another co-passenger caught the miscreants which resulted in a fight between them. As the next station was approaching the train became slow. At that time the miscreants tried to jump down from the train. The other passenger who was involved in a scuffle chased the miscreants. The said passenger caught the miscreants on the railway track and shouted. GRPS constables and public assembled there. Witness identified the appellant as the person who was carrying the knife. He proved his signature on the seizure list relating to seizure of the knife. He identified the knife in Court. In cross-examination he stated there was no sign or signature affixed to the seized knife.

10. P.W. 4 stated that he had boarded the Midnapur local train. The train left Santragachi Station around 11.15/11.20 p.m. At that time the appellant who was carrying a revolver pointed the gun at P.W. 1 while co-accused Md. Samim assaulted P.W. 1 with a knife. P.W. 1 sustained injury on his head and handed over money and mobile to the accused persons. The accused persons came towards the witness and pointed revolver at his head. He defended himself by pushing the revolver and

narrowly saved himself. He was able to snatch away the revolver and threw the same at the head of another accused who managed to escape. Accused Md. Samim gave the knife to the appellant then the appellant assaulted him with a knife. The witness caught the appellant and sustained bleeding injury of his hand. When the train reached Ramrajatala station the accused persons jumped out of the compartment. Witness chased and caught the appellant. The appellant was taken to the police who arrested him. The knife was seized in his presence and he signed the seizure list. He was treated by the doctor. He proved his signature on the seizure list as well as in the injury report.

11. P.W. 5 is a constable and was posted at Shalimar GRPS. He stated that on getting news of dacoit he came with Barababu S.I. D.N. Samanta, to Ramrajatala station. He found some passengers had suffered injuries from dacoits and the passengers and dacoits were brought to the police station. The appellant and the co-accused persons were identified by the witness.

12. P.W. 6 is another constable who was also posted at Shalimar GRPS. He stated that he was present in the Midnapur local train after performing his duty in Jagannath Express from Howrah to Mecheda. While he was checking lady's compartment he heard hue and cry from next compartment. When the train stopped he ran towards the compartment and found one person coming out who had vojali in his hand. He identified the person as the appellant. He stated that the appellant jumped over the railway line. He also caught the appellant and informed the matter over phone to Shalimar GRPS. Daroga Babu of Shalimar GRPS came. He identified the knife seized at the place of occurrence. In cross-examination he admits he did not affix personal identification on the knife.

13. P.W. 7 was posted at Shalimar GRPS. He accompanied Bara Babu of Shalimar GRPS to the place of occurrence. He stated that one of the accused was caught at the place of occurrence. He identified the appellant as the accused.

14. P.W. 8 is another constable who corroborated the evidence of P.W. 7.

15. P.W. 9 was Officer-in-Charge of Shalimar Police Station. He received written complaint and conducted the investigation. In the course of investigation he collected injury report. He obtained warrant of arrest against the absconding co-accused and Shalimar Police Station subsequently arrested the said co-accused person.

16. P.W. 10 is the home guard attached to Shalimar GRPS. He has corroborated the evidence of P.W. 6.

17. P.W. 11 is the doctor who treated the injured persons including P.Ws. 1, 4 and the appellant.

18. P.W. 12 has corroborated the evidence of P.W. 6 and P.W. 10 and identified the appellant.

19. P.W. 13 has conducted the remainder of the investigation and has filed the charge-sheet in the instant case.

20. Evidence of P.W. 4 injured eye-witness which is most vital. He has proved prosecution case and the involvement of the appellant. He caught the appellant at the place of occurrence red handed. He identified the appellant in Court. His evidence is corroborated by the other witnesses, namely, P.Ws. 3, 5, 6, 7 and 10. The witnesses have proved beyond doubt that the appellant was one of the miscreants who were in the train compartment and had participated in the assault of P.Ws. 1 and 4 and thereafter was caught by P.W. 4 while he was trying to flee away.

21. In view of such consistent evidence on record particularly the fact that the appellant was caught red handed and thereafter his identity was immediately disclosed, I am of the view that test identification parade was not necessary in the instant case. I am also unable to accept the contention that the seized knife was not the weapon of assault. Seizure has been proved by the prosecution witness. Their signatures have also been proved on the seizure list. Witnesses have also identified the material exhibited in Court. The claim that the knife was not labelled or sealed is incorrect inasmuch as P.W. 13 states the knife bears a label in his hand writing.

22. For the aforesaid reasons, I am of the opinion that the prosecution has been unable to prove his case beyond reasonable doubt.

23. I do not find any merit in the instant appeal and the same is accordingly dismissed.

24. The appellant is directed to surrender before the trial Court within a month to serve out the sentence in accordance with law. Copy of the judgment along with the lower court records be sent down to the trial Court at once.