(2010) 10 CAL CK 0073

Calcutta High Court

Case No: C.R.R. No. 1556 of 2003

Sri Khudiram Maity		APPELLANT
	Vs	
The State of West Bengal and Others		RESPONDENT

Date of Decision: Oct. 6, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 148, 149, 302

Citation: (2011) 1 CALLT 416 : (2011) 3 CHN 140

Hon'ble Judges: Girish Chandra Gupta, J

Bench: Single Bench

Advocate: Himangshu De, Dipankar Pal and Tanmoy Ghosh, for the Appellant;Debabrata Roy, for the Respondent

Final Decision: Allowed

Judgement

Girish Chandra Gupta, J.

This revisional application is directed against an order of acquittal dated 30th May 2003 passed by the learned Additional District & Sessions Judge, Fast Track 1st Court, Midnapore, in Sessions Trial No. XXI of September 1995 (State v. Bishnupada Samanta and 14 Ors.) by which all the fifteen accused persons were acquitted of charges under Sections 148, 149 and 302 of the Indian Penal Code.

2. The case of the prosecution briefly stated is that the accused persons accompanied by others led by the accused Mantu Metia sought to raise an embankment through the land belonging to Ananta. Rampada, son of Ananta, and his near relations tried to resist the intrusion whereupon the accused Mantu Metia led an attack, as a result whereof Rampada died and several others were injured. The incident took place on 24th June 1989 at about 10 hrs. in the morning. First information report was lodged at 12.35 hrs. on 24th June 1989 which translated in English would read as follows:

Officer-In-Charge,

Sabang Police Station,

Sir,

I, Sri Madhusudan Maity, son of Sri Gobinda Prasad Maity, resident of Katichaki village within Anchal No. 3 in the territory of Sabang Police Station, beg to state that this day the 24th June 1989, Saturday, around 10 a.m. the following persons led by Sri Mantu Charan Matia, son of Kenaram of village Katichaki, Darda and Sri Mazhiram Murmu, son of late Ram, resident of Barkamal, armed with weapons, arrived at the land of my uncle, Shri Ananta Maity for the purpose of constructing an embankment forcibly. When my brother Rampada Maity son of Ananta, my father Gobinda Prosad Maity, another uncle Khudiram Maity and I tried to resist them Shri Mantu Matia directed his supporters to commence the assault. Shri Sindhu Samanta, son of Bhuban, resident of Darda, Katichaki and Mazhiram Murmu continued to throw arrows as a result whereof my brother Rampada Maity had an arrow struck in his throat and has been sent for hospitalisation in a very serious condition. My father, my uncle and I have been injured by strokes of lathi. My house has been surrounded by the aforesaid cadres of CPI(M). They are threatening to cut us into pieces and to burn down our household if the matter is reported to the police.

I therefore request you, Sir, to do me justice after proper investigation. Be it also noted that the aforesaid persons assaulted all of us including my brother with the intention of killing us. Bhuban Samanta chased us with his gun in hand. We have picked up some of the arrows.

Name of the accused:

1) Sri Mantu Charan Matiya son of Kenaram of village....

2) Sri Mazhiram Murmu son of late Ram....

3) Sri Sindhu Samanta son of Bhuban....

4) Sri Niranjan Rana son of Kishori....

5) Sri Shyamcharan Samanta son of Haripada....

6) Sri Hemanta Santara son of late Bihari....

7) Sri Gourhari Das son of late Haripada

8) Sri Bishnupada Samanta son of late Bhuvan....

9) Sri Rampada Das son of Khudiram....

10) Sri Mriyunjoy Patra son of Chintamani

11) Sri Monoranjan Das son of Harekrishin

12) Sri Bhuban Samanta son of Durgapada....

13) Sri Bijoy Patra son of Pulin....

14) Sri Rampada Ghorai son of kanta....

15) Sri Gour Samanta son of Bhuban....

And many others

Humble petition of
24.6.89 Sd. Madhu Sudan Maity

The learned Trial Court in passing the order of acquittal held that "certainly the deceased Rampada Maity died as result of injuries caused in the circumstances, but who caused such mischief and so of throwing of arrow is not clear and there have been different versions and none is so much strong and reliable.

3. This conclusion of the learned Trial Court goes to show an error apparent in law. This was a case where a large number of people armed with deadly weapons had assembled with the illegal object of forcibly raising an embankment on the land belonging to Ananta. Common object in such a case is the basis of liability. Who dealt the deadly blow is not of much significance. Reference may be made to the judgment in the case of Masalti Vs. State of U.P., . In paragraph 15 of the judgment Their Lordships laid down the law as follows:

Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants.... it may not be necessary that all of them have to take part in the actual assault.

4. Reference in this regard may also be made to the judgment in the case of Ranbir Yadav Vs. State of Bihar,

5. The second reason appearing from the impugned judgment is that participation of these accused persons at the place of occurrence is also not proved beyond doubt.

6. Nine eyewitnesses were examined in this case. Two of them were injured witnesses. They are P Ws 2 and 14. PW 2 Madhusudan Maity deposed as follows:

We came to know that Mantu Metia and others tried to construct a road over the land of Ananta. We tried to restrain the accused persons. Then accused Mantu threatened to kill us. Accused Mantu Metia, Majhiram Murmu, Sindhu Samanta, Mritunjoy Patra, Bejoy Patra, Monoranjan Das, Rampada Das, Shyamapada Samanta, Hemanta Santra, Gour Das, Bistu Samanta, Gour Samanta, Bhuban Samanta and others started throwing arrows at us. My brother Rampada sustained

injury by arrow at his neck and stomach. We were also assaulted by lathi by the accused persons.

7. PW 9 Khudiram Maity, another injured witness, deposed as follows:

On 24.6.89 at about 10 a.m., some persons gathered at the land of Ananta Maity in order to construct a road thereon. Majiram Murmu, Ramdas, Montu Metia, Bijay Patra, Manoranjan Das, Niranjan Rana, Mritunjoy Patra, Hemanta Santra, Gourhari Das, Shyam Samanta, Bishnu Samanta, Gour Samanta and others gathered at the house of Bishnu Samanta. When the persons assembled upon the land of Ananta for constructing the road as stated above, myself, my wife Rebati, Ananta, his wife Menoka, Ram Madhusudan, Gobinda all Maity, Gangapada Samanta, Bhagabat Maji and Gobinda Hazra were present at the spot. Then Montu Metia told others to throw arrows to us. He also told that he would take all the risks. Then Ramdas threw arrow at Ananta causing injury at his forehead. One arrow thrown by Montu Metia struck at the abdomen of Ram Maity. The other persons assaulted us with lathi, tungi and spear. Ram Maity fell down on the ground.

8. There is evidence of other witnesses on the record which I need not discuss because the sole argument advanced by Mr. Debabrata Roy appearing for the accused persons was that the names of the accused persons were not disclosed to the attending physician who extracted one of the arrows from the person of the deceased Rampada. The PW 8 is a private practitioner. The deceased Rampada was taken to his chamber in a very serious condition. PW 8 could extract only one of the arrows. The other one could not be extracted by him and the patient was referred to the government hospital where he died. This explains the traumatic condition of the family members of the deceased. It also appears from the written complaint noticed above that Madhusudan was sent to lodge the complaint with the police. Other members took the victim Rampada to the doctor which may explain why the names of the accused persons might not have been considered necessary to be disclosed to the PW 8. The learned Trial Judge did not take the necessary trouble to scan the evidence carefully which he was obliged to undertake. Reference in this regard may also be made to the judgment in the case of Masalti (supra) wherein Their Lordships voiced the expectations from the Trial Court in paragraph 15 of the judgment as follows:

Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not.

9. The learned Trial Judge viewed the FIR itself with suspicion and expressed his opinion as follows:

I like to take judicial notice of the FIR on record, of which the signature of the maker has been marked Ext.1 and to the contents of which he was satisfied when signed. There has been peculiarly no statement of striking by an arrow of the lower

abdomen of Rampada, which is a glaring and striking anomaly.

10. The aforesaid view expressed by the learned Trial Judge also indicates further error in law apparent on the face of the record. Reference in this regard may be made to the judgment in the case of Baldev Singh and another Vs. State of Punjab, wherein Their Lordships held as follows:

The FIR is not a substantive piece of evidence, it is only relevant in judging the veracity of prosecution case and the value to be attached to it depends on the facts of each case. Only the essential or broad picture need be stated in the FIR and all minute details need not be mentioned therein. It is not a verbatim summary of the prosecution case. It need not contain details of the occurrence as if it were an "encyclopedia" of the occurrence. It may not be even necessary to catalogue the overt acts therein. Non-mentioning of some facts or vague reference to some others are not fatal.

11. The lack of any serious attempt, on the part of the learned Trial Court, to apply judicial mind to the evidence on record is also evident from the following observation made by the learned Trial judge:

But in the evidence of Dr. Sujoy Ranjan Das (PW 8) there has been no mention of his treatment of any other person besides Rampada. There is no explanation regarding the actual arrow extracted by him which he did not hand over to the police. This weapon is a vital one which was not taken by the police. In fact, the other one extracted by Dr. K.C. Mohapatra (PW 16) was also not seized by the police from him, as PW 16 said that the arrow taken out from the body of the patient was preserved for further course of action. It is not understood what and which bow and arrow was seized on the following day by the police which were not found at the P.O. on the date of incident.

12. There is plethora of evidence on the record to show that the deceased Rampada died of injury caused by arrows. PW 8 Dr. Das was the first person to extend medical assistance. He extracted one of the arrows. The other one was extracted by the PW 16 Dr. Mahapatra. The evidence of the Autopsy Surgeon (PW 12) is also there to corroborate the fact. But the learned Trial Judge attached greater importance to the omission on the part of the investigation agency in seizing the arrows extracted by the doctors. The further observation of the learned Trial Judge that which bow and arrow was seized by the police on the following day of the incident was not understandable goes to show that he missed the fact that in the written complaint, noticed above, there is a statement that the complainant had picked up arrows from the place of occurrence. Therefore it should not have been difficult for the learned Trial Court to see the source of the arrows seized on the day subsequent to the date of incident.

13. The learned Trial Judge also appears to have nurtured reservation as regards acceptability of the witnesses and he expressed his mind as follows:

I find mostly the witnesses are close relations of the deceased. Other witnesses have made out that they fled away from the scene being frightened and kept a safe distance and so they cannot be worthwhile witnesses in this kind of a case.

14. This conclusion of the learned Trial Judge again is erroneous in law. Reference in this regard may be made to the judgment in the case of Hari Obula Reddy and Others Vs. The State of Andhra Pradesh,

But it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon. Although in the matter of appreciation of evidence, no hard and fast rule can be laid down, yet, in most cases, in evaluating the evidence of an interested or even a partisan witness, it is useful as a first step to focus attention on the question, whether the presence of the witness at the scene of the crime at the material time was probable. If so, whether the substratum of story narrated by the witness, being consistent with the other evidence on record, the natural course of human events, the surrounding circumstances and inherent probabilities of the case, is such which will carry conviction with a prudent person. If the answer to these questions be in the affirmative, and the evidence of the witness appears to the court to be almost flawless, and free from suspicion, it may accept it, without seeking corroboration from any other source. Since perfection in this imperfect world is seldom to be found, and the evidence of a witness, more so of an interested witness, is generally fringed with embellishment and exaggerations, however true in the main, the court may look for some assurance, the nature and extent of which will vary according to the circumstances of the particular case, from independent evidence, circumstantial or direct, before finding the accused guilty on the basis of his interested testimony. We may again emphasise that these are only broad guidelines which may often be useful in assessing interested testimony, and are not iron-cased rules uniformly applicable in all situations.

15. For the aforesaid reasons I am of the opinion that this petition must succeed. The impugned judgment and order is accordingly set aside. The matter shall now go back to the learned Trial Court for retrial in accordance with law without being influenced by any of the observation which may have been made herein.

16. Let the Lower Court Records along with a copy of this judgment be sent down forthwith.

17. The accused persons should be taken into custody and their further release on bail shall depend upon the discretion of the learned Trial Court.

18. Urgent xerox certified copy of this judgment, be delivered to the learned Advocate for the parties, if applied for, on compliance of all formalities.