

Putul Chandra Bora Vs. the State

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Court : Guwahati

Decided On : Jul-28-1954

Judge : Ram Labhaya, Actg. C.J. and Deka, J.

Appellant : Putul Chandra Bora

Respondent : The State

Judgement :

Deka, J.

1. This appeal is on behalf of Putul Chandra Bora who was convicted Under Section 302, IPC by the learned Additional Sessions Judge, L. A. D. agreeing with the majority verdict of the jury and sentenced to transportation for life. The jury was divided as five to four.

2. The case for the prosecution is that one Bangshidar Moor, a Marwari gentleman-one of the partners of the Nagarmal Moor and Company which had a bucket factory on the Kolong Bank road of the Nowgong town was attacked his certain individual on the night of 26-8-1951 at about 8-30 p.m. and was stabbed with a knife or a dagger making a punctured wound on the abdomen. There was another minor injury on the right arm. The injured person fell down immediately on being struck and he was removed to a neighbouring shop of one Labchand where medical aid was rendered to him and the Civil Surgeon attended him immediately. The doctor removed the protruded omentum and stitched the injury under

chloroform. He was subsequently attended by another eminent surgeon and operated on but the man expired in the hospital on 28th of August within about forty-eight hours of the injury being received.

An information was lodged by one Haripada Kumar, an outsider at the Nowgong town Police Station at 9 p.m. on the day of occurrence and, it was stated therein that at about 8-30 p.m. while he was in the shop of one Durgadatta Agarwalla of Haibargaon on the Assam Trunk Road and talking to his brother Babulal, he-heard a noise or a hubbub coming from the Marwari Thakurbari side situated on the Rupahi Road which crossed the Assam Trunk Road and on coming outside the verandah of the shop could see two persons running ahead of the mob which was chasing them. He saw the two persons running towards a hotel attached to Pujabari by the Assam Trunk Road and then making their way towards the pound of Haibargaon leading to Ghotoolai Patty side. He then went towards the Thakurbari and found Bangshidar, a Marwari trader lying stabbed at his stomach at Lab-ehand's verandah where some hundred people-had already assembled. Of the two persons running, one had a dagger in his hand which he could see from its reflection in the street light but he could not recognise the persons except that he imagined one of them to be one Naib Ali of Ghotoolai Patty of the Nowgong town.

The police thereupon started an investigation into the matter and began by arresting Naib Ali whom they released for want of evidence later. The present accused-appellant, Putul Chandra Bora was put under arrest on 28-8-1951 whom they sent up under a charge of murder. The evidence as to the identity of the accused comes from two persons, P. Ws, 3 and 4, Haji Asrab Ali and Kehoram Hazarika. Asrab Ali's evidence is that he is a cultivator living at a distance of about 2 miles from the Nowgong town and he came for the purpose of marketing on the day of occurrence to Haibargaon bazar and after finishing his marketing, while returning home by Rupahi road, he saw before him, a person proceeding ahead of him at a short distance from south to north. It was about 8-30 in the evening and the night was dark and drizzling. At that time, he could see another man coming from the opposite direction and stabbing the man proceeding ahead of him who immediately fell down on being hurt.

Asrab Ali chased the assailant for a distance of about 10 to 12 cubits and then went to Lal-chand's shop where he found an injured man lying and other persons surrounding him. He vainly tried to say to those assembled that he saw the assailant but nobody listened to him and then he went home and kept quiet. A few days later, however, he was sent for by a Marwari gentleman to be placed before the Police for examination. He was examined by the police about ten days after the occurrence and what he said about the identity of the person who stabbed Bangshidar was that he had a pyjama with legs pulled up, a half-shirt and a pagree. He had also an umbrella on. He saw the face of the man in the light of the electric street lights and he had previously seen the man at the time when he came to the Bazar. He identified the accused at the time as well as at the test identification parade which was held more than a month after the incident.

The evidence of the other witness, Kehoram Hazarika is that on the date of occurrence while he was coming on a truck in which he was working as the handyman for a time, could see from the top of the truck where he was sitting on a load of juts that the truck had to be stopped abruptly on the Haibargaon Road because a man had accidentally appeared before the vehicle. The driver pulled the brake when the man crossed on to the side of the Muslim Hotel. He saw something shining in the hand of the man and could see that he had the legs of the pyjama rolled up and had a half-shirt and a pagree on. He had chances to see the accused on previous occasions also and he identified him in the test identification parade. He heard about the stabbing the same evening but never talked to anybody about seeing this man with something shining in his hand who had narrowly escaped an accident. This witness was produced before the police about nine days after the occurrence.

Apart from Haripada Kumar, P.W. 1, who lodged the first information there was another witness, Nalini Mohan Sarkar an employee of Bangshidar Moor who spoke about the occurrence. He was present at the way side shop of one Prem Benode Kundu on the Eupahi road at the time of the occurrence. On hearing a cry of 'catch thief' he came out of the shop and saw a man running from the northern side towards the south being followed by about fifteen or twenty boys. The man had a dagger and the legs of his pyjama rolled up and a half-shirt on. He could not

recognise the man. He had an umbrella also. He saw him passing towards the Muslim Hotel by crossing the road and drop down the umbrella on the Trunk Road when he was about to fall down. He did not join in the chase. The driver of the truck, P.W. 5, Kalinath Bora, on which Kehoram Hazarika, P.W. 4, boarded did not however, speak as to the identity of the man for whom he had to Stop the truck or about the clothes that he had in his wear.

There was no other evidence of identification of the assailant. Inchan Ali, P.W. 6, knew the accused from before and he deposed in the committing Court that he heard Bangshidar and accused Putnl Chandra Bora quarrelling over a girl living in the vicinity of Babgashi shop and the accused warning Bangashi not to resort to her residence again. This was alleged to have taken place about ten days before the occurrence. This story, however, he did not give in the Court of Session. He was declared hostile and cross-examined by the prosecution. On this evidence, the jury returned the divided verdict of guilty by five to four.

3. The accused pleaded not guilty and nothing incriminating was found in his possession as a result of the search that was done after his arrest nor is any evidence led to the effect that he was normally found to wear trousers and half shirt or a pagree.

4. The learned Advocate appearing for the appellant has submitted before us that the charge to the jury has been unfair more particularly, the things that could have been said in favour of the accused have not been said and some inadmissible evidence has been placed before the jury which materially prejudiced the accused in his defence.

I might say at the outset that there are some factors which have not been placed before the jury properly. First, the ejahar and the deposition of Haripada Kumar are to the effect that there were two persons seen running and being chased by some fifteen or twenty persons and he even named one of the suspects though not very sure about his identity. That there were two persons chased and suspected ought to have gone before the jury because the evidence of Haji Asrabj Ali discloses that he saw only one man. Haripada further did not speak of anybody with a pagree or a roiled up pyjama. These two versions are therefore at material

variance and the jury could have been left to judge for themselves which version they considered to be correct.

P. Ws. 4 and 5, the handyman and the driver speak of stopping the truck for allowing a man to pass who had suddenly appeared before the vehicle. But none of them said that he was a man chased by some fifteen or twenty persons or even more as said by P.W. 1 or other witnesses. The attention of the jury ought to have been drawn to this fact because he might be a pedestrian who might have been all alone and might have had nothing to do with the occurrence. As a matter of fact, there is no other eye-witness except Asrab AH who speaks about the stabbing and apart from his being a man who was in the police custody for more than a month and a suspect in a dacoity case, his version was materially contradicted by what is recorded as a dying declaration of the deceased.

It appears from the statement recorded by the learned Magistrate on 23-8-1951 when possibly Bangshidar could speak that when he reached near Thakurbari, a boy in the darkness came from behind and stabbed him on his belly and he could not recognise him. On the other hand, Asrab's evidence is that the assailant came from the other direction and he does not speak of a man following him or the deceased. This fact ought to have gone to the jury because it throws sufficient reflection as to whether Asrab could have been believed in preference to the person injured. Bangshidar was at the time in full possession of his sense and he could see better than a man who followed him at some distance. Asrab was purely a chance witness corrrlno; from a distance of about three miles and he was suddenly discovered to be an important witness ten days after the occurrence. It is further clear that he did not report about the occurrence to any person including the police or any relation of the deceased though he knew of the man's death within about two days of the death taking place.

It ought to have been placed before the Jury that if the case of Asrab All seeing the accused is not believed, there was no direct evidence to connect the accused with the murder and it would be a pure case of circumstantial evidence and the jury could have convicted him only if the link of evidence was so complete that it left no lacuna or it pointed only to one conclusion that the accused was guilty. This

not having been done, in my opinion, the charge was sufficiently defective.

The other objection raised by Mr. Choudhury as to the inadmissibility of the statement of Inchan All before the police is a reasonable objection and that has materially prejudiced the accused because it is easy for the human mind to conjure up a spirit of rivalry even leading to murder when there is a girl at the root of the trouble and here the statement before the police was to the effect that the deceased and the accused quarrelled over a girl. This would indirectly put a suggestion in the jury's mind that it might be that the two friends conspired to kill Bangshidar and in the darkness of the night, they carried out their plan and some members of the jury might have acted on this suggestion even though the evidence of murder may be very little or the evidence if at all believed is mostly circumstantial. A statement of a witness recorded by the police Under Section 162, Criminal P. O., is not admissible unless such statement comes under the proviso to that section-when it may be utilised by the accused (not by the prosecution) for contradicting the witness and when any part of such statement is so used, any part thereof may also be used by the prosecution in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

5. It might as well be added that P. Ws. 3 and 4 were both under the Influence of the police, one having accepted the post of a constable soon after the investigation started and the other a suspect in a dacoity case and in hazat for a time. Taking all these things together, it appears to me that there was little or no evidence for the purpose of conviction of the accused Under Section 302, IPC or for stabbing of Bangshidar on the night of occurrence and the jury would not have possibly returned a verdict of guilty were things properly placed before them by the learned Judge. In our opinion, the charge is materially defective and the conviction cannot be upheld. In the circumstances of this case, there will be no useful purpose served in sending the case back on remand. We therefore direct that the appeal be allowed and the accused be set at liberty forthwith.

Ram Labhaya, C.J. (Actg.)

6. I agree.

