

Gonita Vs. the State

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Court : Guwahati

Decided On : Jan-27-1956

Judge : Sarjoo Prosad, C.J. and Deka, J.

Appellant : Gonita

Respondent : The State

Judgement :

Deka, J.

1. This appeal is on behalf of one Gonita alias Gauranga Ghose who was convicted under Sections 307 and 326, I.P.C. and sentenced to seven years' rigorous imprisonment under each count, the sentences being directed to run concurrently.

2. The prosecution case is that P.W. 1, Nagen: Chandra Hazarika, and the accused appellant were on friendly terms, and on the day of occurrence Nagen Hazarika had been to the accused's place and had taught him something of Algebra. In the evening, at about 9 or 10 P. M, when Nagen Hazarika was returning from the accused's house on a bicycle, the accused followed him some distance up to the bank of Bhogdoi river, and when Nagen Hazarika got down from his cycle to wash his feet, the accused attacked him from behind and dealt three-cut blows on him, which were of a grievous nature.

Nagen Hazarika, being injured, fell into the-river, and the accused went away from there. In. the meantime, some four persons - Bogai Das, Joyram Das, Ghanakanta Das and Sundar Das alias Saru - who had been returning from a cinema show, were attracted by the shouts of Nagen Hazarika and they at once proceeded to help him and, with the help of a bamboo, pulled him to the bank of the river.

On being rescued, Nagen Hazarika reported to them that the accused Gauranga Ghose had inflicted on him the cut injuries. They also saw the accused Gonita alias Gauranga Ghose going away by the river-side, and it is alleged that P. Ws. Sundar Das and Ghanakanta Das followed him to some distance, but on having seen a 'dao' in his hand, they did not proceed further. They, however, took the injured person to the Mission Hospital situated at some other part of the town, and after placing the patient in the Hospital, went to the Jorhat Thana and lodged an information there that very night at about 11-30 P.M.

The F. I. R. was lodged by P. W. 2, Sundar Das, alias Saru, and it was written down by the Daroga according to his dictation as he was illiterate. The First Information Report was further signed by Joyram Das (P. W. 6) and Bogai Das (P. W. 5) Who-were in Sundar Das's company. It is further alleged that apart from these four persons, two neighbours - Motilal Khanikar and Thanuram Das - turned up soon after Nagen Hazarika was rescued from the river. All these persons were examined by the prosecution, including the injured man,. Nagen Hazarika, himself.

3. The medical evidence is that the injuries-were grievous in nature and they are described in the medical evidence as follows:

(1) One incised wound at the left forearm on middle aspect - $5\frac{1}{2}' \times 3' \times 1\frac{1}{2}'$ - grievous.

(2) One incised wound on the left shoulder region - $2\frac{1}{2}' \times 1\frac{1}{2}' \times 1\frac{1}{2}'$ - grievous.

(3) One incised wound, bone deep, on temporal region, on the left side of the head - $2\frac{3}{4}' \times 2' \times 1\frac{1}{4}'$ - grievous.

All these injuries were, according to the medical report, inflicted by a sharp weapon like a 'dao'.

4. The incident, as such, is not seriously challenged except that the accused pleads that he is not guilty. The accused's version is that it is true that on the night of the occurrence, it being 28-7-53; P. W. 1, Nagen Hazarika, had been to the house of the accused and had actually taught him two sums of Algebra, but while coming out from the house, he came all alone on his bicycle, and the accused did not accompany him, whereas he pursued his own duties by taking food to his father's shop near the Arati Cinema Hall where Nagen Hazarika was a 'Checker'.

Some suggestion was thrown at the time of the hearing that Nagen Hazarika might have met with the injuries at some other place, and that they were not inflicted by the accused Gauranga, as alleged

5. The accused appellant was tried with the aid of a Jury in the Sessions Court, and verdict of the Jury was unanimous, in whose opinion, the accused was guilty under both the sections, i.e. Sections 326 and 307, I.P.C. The learned Sessions Judge accepted the verdict of the Jury.

6. Mr. Ghose appearing for the accused has tried to show that the charge was defective on more than one ground. The main contention has been that the statements recorded under Section 161, Cr. P.C. by the investigating officer were put in a boiled form, and that they were not written out separately and in full, and he drew our attention to a passage occurring in the Charge to the Jury, and commented that adequate directions were not given therein. It is better that I quote the passage in extenso:

I must also tell you that it is the duty of the Investigating Officer to record separately the statements of the witnesses. The accused was thus deprived of the opportunity of confronting the witnesses with their statements before the Police. In considering the evidence of these witnesses, you will take this into consideration.

7. We have satisfied ourselves by a perusal of the Diary, and it appears that the statements of P. W. 2, Sundar Das alias Saru, were written out in full by the Investigating Officer, but those of the three other witnesses, namely, P. W. 4, Ghana-kanta, P. W. 5, Eogai and P. W. 6, Joyram, were put in a bracket?, with the only comment that these witnesses supported P. W. 2, Sundar Das alias Saru. It

may, therefore, be said that the statements of these three prosecution witnesses were not taken down in full.

The deposition of the Investigating Officer on this point is not very clear, and that is why we had to refer to the Diary ourselves. What Mr. Ghose contends is (as he read out to us the head note of the case reported in 'Tilak Singh v. The State' 1952 Assam 169 (AIR V 39) (A), that the Jury should have been told that it was open to them, If they thought proper, to disbelieve the witnesses on the assumption that their statements, if properly recorded, would have contradicted their evidence in Court.

The proposition, as aforesaid, may not be strictly correct. The essential requirement is that the attention of the Jury should be drawn to this fact and the Jurors warned in cases where the statements of the witnesses are not properly recorded by the Police Officer during the course of investigation. The object is that the value of the evidence or a statement may be tested in cross-examination lay the accused in the Court, and if it materially varies from the earlier statement, the accused can get certain advantage therefrom.

The intention of the law is that) this lacuna should not be overlooked, namely, that the Jury should be made aware of the duties of the Police Officer as to the recording of the statements of prosecution witnesses correctly as to all material details. In case it is not fully and correctly done, the accused works under certain difficulty because he cannot ascertain what the witness actually stated before the Police.

The Jury should be told of this disadvantage of the accused in case the statements of the witnesses are not properly recorded by the Police, and they may, if they so desire, draw inference adverse to the prosecution. It is always open to the Jury either to believe or not to believe a certain witness, but they should be apprised, in these circumstances, of the disadvantage caused to the accused as a result of a statement not being duly recorded by the Police Officer.

The accused further loses the chance of confronting the statements or challenging the truth of the same in case of any variation. This is what the Jury should be

positively made to understand. In the present case, from the passage we have quoted above, it is clear that the learned Sessions Judge gave sufficient hints as to the inconvenience suffered by the accused in case the statements made before a Police Officer during investigation are not properly recorded, but he failed to express clearly what had actually happened, possibly because the evidence on the point was not very clear.

We having satisfied ourselves as to the evidence on record as well as the statements recorded by the Police in the diary, do not see any reason to hold that the accused has thereby been seriously prejudiced. Nor do we think that the learned Sessions Judge's comments were not adequate in the circumstances of the case. Therefore, we are not prepared to give much weight to this contention.

8. Mr. Ghose has further contended that the bicycle on which Nagen Hazarika is alleged to have proceeded, was not produced in Court, nor the umbrella in which the 'dao' was presumed to have been kept hidden. These factors were pointed out to the Jury by the learned Sessions Judge, and we do not think that they are of much value.

The prosecution has, as a matter of fact, made fully clear the circumstances under which the injured man was found and about the recognition of the accused at the time of the occurrence by the four persons who arrived at the spot soon after the incident. Though it has been argued that there might have been some bad woman at some distance, that, by itself, cannot in any sense minimise the weight of the evidence as recorded. There has been no suggestion that there was any brawl or noise at a certain distance or that the man was dragged from there, or that he was waylaid by some other persons.

9. The charge, as a whole, seems to us to be ' very fair, and we find no material misdirection or non-direction which might have caused a failure of justice or prejudice to the accused.

10. Mr. Ghose has next contended that since there is no evidence to the effect that Nagen Hazarika was pushed into the river by the accused, the charge under Section 307, I. p. c. cannot be sustained on the evidence. Section 307, I.P.C.

says:

Whoever does any act with such intention or knowledge, and under such circumstances that, if He, by that act caused death, he would be guilty of murder, shall be punished with imprisonment, of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

In this case, we need not go into the fact of, throwing Nagen Hazarika into the river, though that forms a part of the allegations in the charge. But the fact that the injuries were caused in vital parts of the body, and those with a deadly weapon that could, by itself, be sufficient ingredient for a charge under Section 307, I.P.C. We do not, therefore, think that the conviction of the accused even under Section 307, I.P.C. was bad, assuming that there was no truth in the allegation of pushing Nagen Hazarika into the river.

The main gravamen of the charge is the serious injuries that were caused on the head and neck of Nagen Hazarika. In these circumstances, we see no reason to interfere with the conviction of the accused, which we hereby affirm, but, in consideration of the comparatively young age of the accused, we reduce the sentence of imprisonment under each charge to five years' rigorous imprisonment. The sentences are to run concurrently, as directed by the learned Sessions Judge. The appeal fails except that the sentence is modified.

Sarjoo Prosad, C.J.

11. I agree.

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