

Kartick Das Vs. the State

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Court : Kolkata

Decided On : Jan-19-1972

Judge : N.C. Talukdar and ;A.K. De, JJ.

Appellant : Kartick Das

Respondent : The State

Judgement :

N.C. Talukdar, J.

1. This Rule is against an order dated the 11th August. 1971 passed by Sri. K. Naskar. Magistrate. 1st Class. Alipore. District 24 Parsanas in case No. G. R. Case No. 701 of 1970 committing the accused-petitioner. Kartick Das alias Kartick Chandra Das. to the Court of Session for standing his trial on a charge under Section 302/34 I.P.C. along with co-accused Kedary Roy Choudhary.

2. The facts leading on to the Rule are short and simple. On the 2nd April, 1970 at about 6-30 p.m.. the deceased one Rabi Das of premises No. 13. Panditia Road, Calcutta, which is a bustee area, came out of his house and while he was proceeding by Aswini Dutta Road, the accused Kedar confronted him near a tubewell. The other two accused Kartick and Sankar were also there. Sanker had a knife in his hand and handed over the same to Kedar asking him to finish Rabi Das. Thereupon the accused Kedar attacked Rabi stabbing with his knife, causing multiple bleeding injuries on his person. Rabi thereafter ran towards his home

shouting 'Mago, Kedar. Sankar Mere fellow' and fell down senseless in front of his hut in the bustee. Rabi was thereafter carried to the Sambhunath Pandit Hospital where he was declared dead. P. W. 1, Bejoy Das, who accompanied the deceased Rabi Das. made a statement before the police and the first information report was drawn up. Investigation proceeded and on completion thereof, the police submitted a charge-sheet against the three accused under Section 302/34 I.P.C. During the enquiry the case of Sankar Deb was sent to the Juvenile Court because he was aged between 15 and 16 years, coming within the ambit of the West Bengal Children Act. The defence case, inter alia, is that the accused are not guilty and that they have been falsely implicated. Five witnesses were examined at the enquiry and the learned Magistrate committed the two accused to the Court of Session as mentioned above under Section 302/34 I.P.C. This order has been impugned and forms the subject-matter of the present Rule.

3. Mr. Chintaharan Roy, Advocate (with Mr. Arun Kishore Das Gupta, Advocate) appearing in support of the Rule on behalf of the accused-petitioner made a short submission. Mr. Roy contended that there is no basis for the order of committal, inasmuch as, on the evidence itself it will be abundantly clear that the mother of the deceased. P.W. 2 Lakshmi Dasi, clearly and categorically admitted in her cross-examination that the accused in the dock. Kartick Das alias Kartick Chandra Das. is not her deceased son's friend Kartick. She further stated that it is that Kartick whom she had mentioned in her examination-in-chief P. W. 1 Beioy Das. who was declared hostile, stated that all the three accused came out together but he had not ascribed any part to the accused-petitioner. A reference to the present accused-petitioner in the first information report is not by itself sufficient enough to warrant an order of committal. The evidence of P.W. 2 is material and on a consideration thereof the court of enquiry could have held that so far as the present accused-petitioner is concerned he should not have been committed to the Court of Session. Mr. Jogesh Chandra Sinha, Advocate, appearing on behalf of the State joined issue. Mr. Sinha contended that at this stage what is required for the purpose of committal is that there is prima facie evidence and as it is difficult to brush aside the evidence to P. W. 1 . the order of committal can be sustained. We are unable to agree with him in view of the material evidence of P. W. 2 which disproves the prosecution case regarding the complicity of the present

petitioner The contention of Mr. Roy accordingly succeeds.

4. In the result, we make the rule absolute : set aside the order of committal so far as the accused-petitioner. Kartick Das alias Kartick Chandra Das is concerned; and we direct that the proceedings so far as he concerned may be quashed.

A.K. De, J.

5. I agree.

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