

State of West Bengal Vs. Ashoke Bose

State of West Bengal Vs. Ashoke Bose

SooperKanoon Citation : sooperkanoon.com/876322

Court : Kolkata

Decided On : Feb-21-1997

Reported in : 1997CriLJ3436

Judge : Nripendra Kumar Bhattacharyya and ;Vidya Nand, JJ.

Acts : Indian Penal Code, 1860 - Section 302; ;Code of Criminal Procedure (CrPC) - Sections 161 and 313(1)

Appeal No. : Govt. Appeal No. 6 of 1994

Appellant : State of West Bengal

Respondent : Ashoke Bose

Advocate for Def. : Kazi Safiullah and ;Ranjit Kumar Ghosal, Adv.

Advocate for Pet/Ap. : Achyut Basu, Adv.

Disposition : Appeal allowed

Judgement :

Nripendra Kumar Bhattacharyya , J.

1. The State has preferred this Govt. Appeal No. 6/94 against a judgment of acquittal of Asok Bose who was an accused in a case under Section 302 of the IPC passed by the learned Additional Sessions Judge, 1st Court, Howrah in S.T.

Case No. II (July)/1993.

2. The prosecution case, in short, is that Dipa Dutta (P.W. 4) and the victim Gopa Mitra were friends and they were to appear in Higher Secondary Examination in February, 1992. Both of them went to attend the coaching class of Basudeb Banerjee of Ballavbati as usual on 1-2-92 at about 6-30 to 7-00 a.m. and after finishing their study there both of them went to see a fair at Munsirhat. Thereafter they were returning home through the brick built village path of their village Bhursuit Bamunpara at about 10-30 a.m. The said village path runs from west to east from the village Bursuit Bamunpara and on the western end of that path Munsirhat Panpur Road runs, which is a motorable road. When both of them were proceeding towards their village from the junction of the village path and the Munsirhat Panpur Road they saw Asok Bose, the accused, sitting on a culvert of the village path and at that time he had a bye-cycle with him. When they came up to 30 cubits from that junction through that village path at that time Dipa Dutta was ahead of Gopa. As they crossed the culvert Asok followed them on foot with his bye-cycle. As Gopa and Dipa proceeded further then Dipa heard a sound of falling of a bye-cycle and on looking back she saw Asok assaulting Gopa with a knife. She then raised alarm and ran towards her house and in that condition she again looked back and found Asok running through the field and Sirajul (P.W. 9) and Niyamat (P.W. 8) of village Bursuit Bamunpara caught him after chase. She then had fallen on the road feeling giddiness. Subsequently she came to know that Gopa had died.

3. Chitra Ghosh (P.W. 3), elder sister of victim Gopa, married one Probhat Ghosh of Bursuit Bamunpara. Chitra's are 7 sisters and 1 brother name Snehasis Mitra (P.W. 14). Chitra is a School Teacher. On 1 -2-1992 at 10-20 to 10-30 a.m. while she was going to attend her school at Munsirhat and came near the Kohinoor Football Club Ground she found from a distance that a person was stabbing another person who was writhing with pain. She then ran to the spot and found Asok clinsing his hand marked with blood with a napkin (Gamcha) and Gopa was lying on the ground. She noticed many bleeding injuries on the person of Gopa and she tried to stop the bleeding by pressing the wounds with her hands, but in vain. Asok ran through the field and was caught in the field by two persons. She

found one bye-cycle, one side bag, one knife and one napkin lying at the spot. She also found slippers and wrapper of Gopa. She then took Gopa to the Gabberia hospital with the help of some other persons in a private car.

4. In the hospital the doctor examined Gopa and the doctor asked P.W. 3, Chitra Ghosh, how Gopa received those injuries and Chitra narrated the incident to the doctor and also told the doctor that Asok Bose of village Dhosa had stabbed Gopa with knife on the brick built village path near the football ground in Village Bamunpara at about 10-30 a.m.

5. P.W. 19 Dr. Swapan Kumar Majhi examined Gopa at the Gabberia hospital and he deposed about the statement made by Chitra Ghosh. On that date Gopa died in the hospital.

6. The incident was witnessed by P.W. 1, Krishna Kumar Dutta as P.W. 3, Smt. Chitra Ghosh, P.W. 4, Dipa Dutta, P.W. 6, Tuka Hazra and P.W. 8, Sk. Niamat Ali.

7. P.W. 7, Subhankar Ghosh is a resident of Bhursuit Bamunpara. On the faithful date i.e. 1-2-92 at about 10-30 a.m. when he was at home he heard that Dipa Dutta was crying saying that Asok Bose had murdered Gopa Mitra. On hearing this he went to the spot and found Gopa lying on the brick built road near Kohinoor Football Ground having several bleeding injuries on her person. From Gopa he ascertained that Ashok Bose of Dhasa assaulted Gopa with knife. He also found Chitra Ghosh was there. He then went to Munsirhat Panpur Road for bringing a vehicle and found some persons halted there on hearing a cry. He stopped a private car and took Gopa to the Gabberia hospital in that car being accompanied by Chitra Ghosh and some other persons. He also saw on the spot a bye-cycle and a knife and he identified the same in the Court.

8. P.W. 14, Snehasis Mitra is the brother of deceased Gopa Mitra and Chitra Ghosh. He identified the dead body of Gopa Mitra in the Gabberia Hospital to Sub-Inspector, Ashis Banerjee, P.W. 17 and Ashis Banerjee held the inquest over the dead body of Gopa Mitra and prepared an inquest report signed by Snehasis Mitra Exbt. 3/1 and the report and the signature of Ashis Banerjee on that report is Exbt. 3/2. Ashis Banerjee, P.W. 7 then started Panchala P.S. U/D Case No. 5 of 92

dated 1-2-1982 over that incident and sent the dead body to the (sic) Uluberia Hospital through Constable No. 642, Sachhidananda Satpati (P.W. 18) for P.M. examination over the dead body of Gopa Mitra.

9. P.W. 13, Dr. Pankaj Roy held the postmortem over the dead body of Gopa Mitra on 2-2-92 being brought and identified by Constable No. 642, Sachhidananda Satpati (P.W. 18) and found the following injuries on the dead body of Gopa Mitra :

--

(1) Incised wound over antero and medial aspect of right four arm about 2' x 1 " (2) One penetrating wound over chest medially of right breast measuring about 2' x 1' x 5'. 3rd and 4th ribs had been cut. Lungs injured partially and huge bleeding in chest cavity i.e. haeremothrose. (3) One incised wound over neck right side 2' x 1' x 2' downwards and laterally. (4) One incised wound at the back measuring 1' x 1' x 2'. (5) Three incised wounds were present over right shoulder measuring about 2' x 1' x 1', 3' x 1' x ' and 1 ' x 1' x ' respectively. (6) One incised wound over neck in front side of midline about 1' x ' Obligacy trackes rupture. He did not find any external injury on the dead body. He examined the dead body both externally and internally. Stomach contained brown colour liquid possibly caused by accumulation of blood.

10. P.W. 1, Krishna Kumar Dutta is the brother of Dipa Dutta. On 1-2-92 at about 10-30 a.m. he was going to Munsirhat Bazar from his residence at Bursuit Bamunpara and while going through the brick built village path, he found Asok Bose sitting on a culvert with a bye-cycle standing near him. Asok was known to him since his boyhood. He also found at that time that his sister Dipa Dutta, P.W. 4 and Gopa Mitra, daughter of Lt. Laxmikanta Mitra of village Bursuit Bamunpara were returning after attending the Coaching Class. As he crossed them he heard a hue and cry as 'Banchao Banchao' raised by his sister Dipa Dutta and on looking back he found Asok Bose assaulting Gopa Mitra with a sharp knife. He also raised alarm and Asok Bose ran through the field leaving his knife there. The bye-cycle was also lying there. He further deposed that Asok Bose assaulted Gopa Mitra with a knife near the culvert by the side of the village path. Niyamat Ali, P.W. 8 and Sk., Sirajul, P.W. 9 are uncle and nephew by relation. Niyamat Ali was ploughing

the land on 1-2-92 at about 10-15 to 10-30 a.m. Krishna Kumar Dutta, P.W. 1 was known to him from before as he belongs to the same village and he also knew his sister. While he Was ploughing the land he heard a cry of a woman and he saw Asok was assaulting another person then Asok ran towards the western side from where Niyamat was standing, Niyamat chased him and caught him and Sirajul, P.W. 9 was also in the field. He also saw Asok coming there and then both of them brought Asok to the place of occurrence which is the place of occurrence as the brick built village path and there they found Gopa Mitra lying with bleeding injuries and she had 6/7 bleeding injuries on her person. P.W. 8 also found a blood marks from the person of Asok and P.W. 9 also found blood marks in Asok's shirt. P.W. 8 found cut mark in the hand of Asok. He also found a knife was lying in the place of assault and a bye-cycle also lying there. Then the villagers assembled there and took Asok to the Kohinoor Football Club. He knew Asok from before the incident. A hawai shirt which Asok was wearing at that time of the incident. He identified all those materials in Court.

11. P.W. 1, Krishna Kumar Dutta, rushed to Gopa and found her lying with several bleeding injuries on her person and she was writhing in pain and asking for water. He also found on the spot a bye-cycle, a rapper of Asok and a knife. He also found the slippers of Gopa. Asok had blood marked on his hand and also blood marks in his wearing apparels. He also noticed cut marks in the hand of Asok. The villagers took Asok to Bamunpara Kohinoor Club. Gopa was sent to Gabberia hospital by private car and he went to Use police station along with Suranjan Sarkar, P.W, 15. When he came to the spot he found Chitra, the elder sister of Gopa. He came there on hearing aery and Chitra's husband Probhat Ghosh also came there. He further deposed that Gopa had five sisters and one brother. According to him the villagers assaulted Asok after he was caught.

12. P.W. 15, Suranjan Sarkar is a resident of Bursuit Bamunpara. On 1 -2-92 at about 10-30 a.m. he accompanied Krishna Kumar Dutta, P.W. 1 went to the J.B. Pur Police Station and he wrote a complaint as per dictation of Krishna Kumar Dutta. Then it was read over to him and he put his signature on the same. The written complaint is Exbt. 1 and the signature of P.W. 1 is Exbt. 1/1.

13. P.W. 16, Sub-Inspector, Monoranjan Goswami filled up the formal portion of the FIR and put his signature on the same Exbt. 4. He also made an endorsement on the same Exbt. 1/2 and endorsed the case for investigation to Sub-Inspector Amar Nath Ganguly (P.W. 20). Amar Nath Ganguly after taking investigation went to the place of occurrence near Kohinoor Football Ground on a brick built village path. There he found one pair of blue colour hawai chappel and one used 'Tunte Colour' wrapper with blood marks on it (said to be of Gopa Mitra), one old napkin soaked in blood, one knife with blood marks having a blade about 12' length and one violet colour shawl smeared with blood marks (those are said to be of accused Asok Bose), one bye-cycle of accused Asok Bose, one cotton bag tied with the hand of the bye-cycle. He seized those articles under a seizure list. He also seized the blood stained earth and some control earth by the same seizure list Exbt. 2/1. He also prepared a sketch map of the place of occurrence Exbt. 6 and he ascertained that Sub-Inspector Ashish Banerjee held inquest over the dead body of Gopa Mitra and started U/D Case. He arrested Asok Bose and brought him to the P.S. He examined him in the P.S. and seized one light blue colour tericot full pant with blood marks on it and mud on places and one biscuit colour tericot half shirt with blood marks on it including right sleeve which Asok was wearing at the time of his arrest under a seizure list Exbt. 7. Asok put his LTI on the same. Shirt and pant as mentioned above arc mat Exbt. VII. The hawai chappals is mat. Exbt. III. The bye-cycle, two wrappers one knife, the cloth bag, napkin are also mat. Exbts. He forwarded the accused to the Court with a prayer for adding Section 302, IPC in the FIR. As Asok was injured he was sent to the hospital. He collected the injury report, inquest report, dead body challan, copy of the FIR of the Panchala P.S.' U/D Case No. 5 dated 1-2-92. He also collected P.M. report and examined witnesses and recorded their statement under Section 161, Cr. P.C. and after completion of the investigation he submitted charge-sheet against the accused Asok Bose under Section 302, IPC.

14. The prosecution for bring home the charge against the accused Asok Bose examined six eye witnesses namely P.W. 1,. Krishna Kumar Dutta, P.W. 3, Smt. Chitra Ghosh, P.W. 4 Dipa Dutta, P.W. 6 Tuka Hazra and P.W. S Sk. Niyamat Ali.

15. P.W. 1, Krishna Kumar Dutta gave a graphic description of the incident. According to him on hearing the cry of his sister Dipa Dutta he looked back and found Gopa was lying on the ground and Asok was stabbing her with a sharpened knife and he raised alarm and Niyamat Ali, P.W. 8 and Sirajul, P.W. 9 caught hold of accused Asok. Even in cross-examination the material part of his evidence could not be shaken and he stood the test of cross-examinations. There may be some discrepancies here and there but that is not material as those discrepancies are bound to occur as because the statement was recorded on the date of the incident by the I.O. Amar Nath Ganguly, P.W. 20.

16. He is being corroborated by another eyewitnesses the elder sister of deceased Gopa, Chitra Ghosh P.W. 3. According to her she saw the incident when she arrived near Kohinoor Football Club Ground. She saw one person stabbing another person and the other person was writhing in pain. On rushing to that spot she found Asok Bose there and at that time he was rubbing the blood marked on his hand with a napkin and Gopa was lying on the ground. She found Gopa had many bleeding injuries and she tried to stop them but in vain. Asok then ran through the field and he was apprehended by two persons. She also found the bicycle, one side bag, one knife and one napkin of the accused lying there and she found there also the slippers and wrapper of Gopa. She took Gopa to the hospital in a private car being accompanied by some other persons and she narrated the incident to the doctor at the Gabberia hospital who attended Gopa and he narrated about the incident and told the doctor P.W. 19 Dr. Swapan Kumar Majhi that Asok Bose stabbed Gopa with a knife on the brick built village path near the football club ground in village Bursuit. Bamunpara at about 10-30 a.m. She has been corroborated on this point by P.W. 19, Dr. Swapan Kumar Majhi who was the M.O. then in the Gabberia hospital.

17. On 1-2-92 he examined Gopa at about 11 -30 a.m. who was brought to the hospital by her sister Chitra Ghosh with stabbing injuries. P.W. 19 further deposed that Chitra Ghosh told him that Gopa Mitra had been stabbed by Asok Bose of village Dhasa at about 10-30 a.m. at the Kohinoor Football Ground. He recorded the same in the injury report Exbt. 5. Gopa was gasping and unconscious. Within three minutes from her arrival to the hospital she died. He found injuries on the

person of Gopa which could be caused by sharp cutting weapon like the dagger Exbt. 1 which was shown to him. This statement could not be shaken on trial. In cross-examination he further deposed that in the injury report he noted the exact statement made by Chitra Ghosh. He was also firm in his statement that he did neither add nor omit anything from the statement.

18. P.W. 4, Dipa Dutta was accompanying Gopa Mitra from the very beginning during the time of her returning to their village at Bursuit Bamunpara. According to her they went to the Coaching Class of Basudeb Banerjee of Ballabbati on 1 -2-92 and after attending that Coaching Class at about 6-30 to 7-00 a.m. both of them went to see a fair at Munsirhat and from there they were returning to their village at Bursuit Bamunpara and as they were approaching their village through the brick built village path from the crossing of that path of Bursuit Bamunpara Road Munsirhat Panpur Road and went about 30 cubits from that junction they crossed a culvert in village path. While crossing that culvert she found Asok Bose was sitting on it with a bye-cycle standing there. Soon they crossed, she was ahead of Gopa and then proceeding a little further she heard the sound of falling of a bye-cycle and then she looked back and found Asok assaulting Gopa with a knife. She raised alarm and rushed towards her house and then again she looked back and found Asok running through the field and two persons namely Sk. Niyamat Ali P.W. 8 and Sk. Sirajul, P.W. 9 caught hold of Asok. She then felt giddiness and had fallen down on the road. Subsequently she came to know that Gopa died. She identified the knife Exbt. 1 in the Court. She further deposed that while returning for home they saw her elder brother Krishna Kumar Dutta .on the village path who crossed them at a short distance from the culvert. This material part of the evidence could not be shaken in the cross-examination. There may be contradictions but not on vital points and the contradictions for that becomes irrelevant.

19. P.W. 6, Kurnari Tuka Hazra is another eye-witness. She is the maid servant and she used to work as such in different houses in the village. She knew Gopa Mitra. On the fateful day she was catching fish in the field and the brick built road of the village was at a distance of one bigha from where she was catching fish. During the time of incident she was 19 years old. She saw Asok Bose sitting on

the culvert with one bye-cycle and Asok had a wrapper on his person. After a while she heard the sound of falling of a bye-cycle and then looking she found that Asok was stabbing Gopa with a knife on the brick built path and Gopa was crying. As she ran towards the spot Asok threatened her that he would stab her in the like manner if she would come to him. Then she fled away. Subsequently she came to know that Gopa died. She identified the bye-cycle mat. Exbt. VI, the knife mat. Exbt. I. She also identified Asok. Asok was known to her from before as he used to pass through the village pathway everyday.

20. P.W. 8, Sk. Niyaniat Ali is a cultivator and a resident of village Bursuit Bamunpara. On the fateful day on 1 -2-92 at about 10-15 to 10-30 a.m. he was ploughing land in the field. He knew Krishna Kumar Dutta and the sister of Krishna Kumar Dutta from before as they belonged to the same village. He heard a cry of a woman while ploughing the field and on looking he found Asok assaulting another person and then Asok ran on the western side. West to the place where Sk. Niyamat Ali was standing. He gave a chase and caught hold of Asok and thereafter his nephew Sirajul, P.W. 9 came there and also caught hold of Asok and then they brought Asok to the place of incident on the brick built village path. Gopa was lying there with bleeding injuries. She had 6/ 7 bleeding injuries on her person. He also found blood marks on the person of Asok. Asok had a cut mark in his hand. He found a knife and a byecycle lying there. Then villagers assembled there and took Asok towards the Kohinoor Club and then he returned to his work. He identified the knife Exbt. 1 and the bye-cycle Exbt. VI. According to him, Asok stated before him that he rightly assaulted Gopa. This is also the evidence of P.W. 9 Sk. Sirajul. They were not contradicted on this point by the defence.

21. This is the state of evidence of the eyewitnesses. It has not been brought on record by cross-examination that they were interested witnesses and they had adverse interest against the accused or they were inimical towards the accused.

22. P.W. 5, Ajit Ghose also deposed that he found Asok sitting on the culvert of the village path and he had a bye-cycle with him having a side bag hanging from the handle of the bye-cycle and he was wearing one violate colour wrapper. He is not a seizure list witness but he is a witness of the seizure. He identified the

wrapper Exbt, II which was seized from the place of occurrence and also the knife Exbt. 1 which was also seized from the place of occurrence. No suggestion was given to him that he was inimical towards the accused. On the other hand, it appears that he was a disinterested witness. Virtually no cross-examination was directed so far he is concerned regarding the seizure of the materials or that Asok had no violet colour wrapper on his person.

23. P.W. 7, Subhankar Ghosh came to the spot after the incident and he found Gopa was lying with bleeding injuries on her person on the village path. He said that Gopa made some statement but that has not been corroborated by any other witnesses. So that part of the statement cannot be relied upon. According to him on the place of occurrence he found Chitra Ghosh, the elder sister of Gopa. He brought the private car in which Gopa was taken to the Gabberia hospital. He saw a bye-cycle lying on the road near the place of occurrence and a knife also. He identified the bye-cycle as mat. Exbt. VI and the knife as mat. Exbt. I. According to him Gopa died on that date. There was no cross-examination on this point by the defence.

24. P.W. 10, Hirendra Nath Dutta a brother of Dipa also saw Asok sitting on the culvert of the village path on the fateful day at about 10-15 a.m. and he saw him while he was crossing. While he was returning from Munsirhat he saw Asok wearing a violet colour wrapper and a bye-cycle was kept standing by his side with one bag hanging from it. He identified those materials in the Court. So on the point of violet colour wrapper he corroborated P.W. 5. He identified the wrapper as mat. Exbt. II. The bye-cycle as mat. Exbt. VI and the bag as mat. Exbt. IV. No cross-examination is directed to the witness on that point.

25. P.W. 11, Saumendra Nath Dey heard about the incident that Asok murdered Gopa with a knife and then he came to the place of occurrence on 1-2-92 and found Gopa lying in a pool of blood with several bleeding injuries. He found the knife, a bye-cycle and one wrapper there. He identified those materials (Exbts. I, II and VII). He also found Chitra Ghosh, elder sister of Gopa there. According to him. Asok was taken to Bamunpara Kohinoor Club Ground. He went to that Club and there Asok Bose confessed that he had stabbed Gopa with a knife because of an

old grudge. According to him, he was examined by the I.O. on 1 -2-92. The suggestion that was given to him in cross-examination is that at the instance of the Chitra Ghosh, Kesto Dutta and the other villagers he made a false statement to the police. No reason has been ascribed why the villagers would instruct him to give false evidence.

26. P.W. 12, Lakshman Karmakar is a blacksmith by profession and he has a smithy shop at Munsirhat Bazar. He is a residence of village Rampur. He has been declared hostile. According to him he manufactured different type of iron ware as per orders of the customers. Village Bursuit Bamunpara is about 40 minutes walk from his village. He further deposed that exbt. 1, the knife was made by him but he said that for whom he made that knife he does not remember. He was declared hostile. After he was declared hostile he deposed that he stated before the I.O. that Asok Bose of village Dhasa paid him money for making the knife and, accordingly, he made the knife for him. So it appears from his deposition that he made the instrument of offence for Asok Bose of village Dhasa and that instrument of offence is exbt. 1.

27. I have already discussed about the evidence of the P.M. doctor Dr. Pankaj Roy, P.W. 13. He opined that death was due to severe haemorrhage and profound shock resulting from the injuries mentioned in his report which was ante mortem and homicidal in nature. Injuries Nos. 2 and 6 were individually and collectively sufficient to cause death and such injuries might be caused by any sharp cutting weapon like the knife and he also opined that such injuries could have been caused by a knife like mat. exbt. I which are shown to him in Court. According to him, further the nature of the injuries indicate that the assault was determined to cause the death of the victim.

28. Discussion of the evidence of P.W. 14, Snehasis Mitra would be a reiteration of what has been stated earlier. So no further discussion is made regarding the evidence of P.W. 14 and 15. Similar is the case of P.W. 15, Suranjan Sarkar, P.W. 16 Monoranjan Goswami, P.W. 17, Asish Banerjee and P.W. 18, Sacchidananda Satpati.

29. I have also discussed the evidence of Dr. Swapan Kumar Majhi, P.W. 19. Further discussion will be a repetition of the same.

30. P.W. 20 is the I.O., Amar Nath Ganguly and according to him along with other materials he seized one violet colour shirt with blood marks from the place of occurrence and he was corroborated by P.W. 5 and 10.

31. There may be some lapses regarding the investigation by the I.O. and the Apex Court in the case of Karnel Singh v. State of M.P. reported in : 1995 CriLJ4173 , inter alia, has held that loopholes in investigation left designedly to help accused at the cost of poor prosecutric, a labourer. Acquitting accused solely on that ground not justified.

32. The Trial Judge in his statement recorded that 'The investigation of the case may be termed in a word as callous. It was done in a manner showing lack of eagerness to reveal the truth. I have already pointed out some defects in investigation. It may list some more which are of greater of import. The I.O. did not take any stops to get the knife in question examined by any finger print expert. If this was done, it would be a conclusive proof whether the accused is the really murderer.

33. He did not send the clothes of the accused containing blood marks to the F.S.L. which also would provide valuable proof in the case. The accused was severely assaulted by the people and as a result he was hospitalised. We do not know whether he sustained any bleeding injury or whether his clothes were actually stained by his own blood or by the blood of the deceased. The I.O. did not lake any steps in the matter', (sic).

34. The Trial Judge then further proceeded in pointing out the defects in the investigation. So the case comes within the parameter as laid down in the case of Karnel Singh (1995 Cri LJ 4173) (supra).

35. In the case of State of Maharashtra v. Prakash an Apex Court decision reported in : 1992 CriLJ1924 , the Apex Court has held that mere plea of the false implication by accused without showing that victim had animus against accused or

they were used by someone else corroborates finding of guilt of accused.

36. In cross-examination of the witness P.W. 11, Saumendra Nath Dey a suggestion was thrown from the side of the defence that the accused has been falsely implicated in the case. At the instance of Chitra Ghosh, Kcsta Du,tta and the other villagers and the police. It has never been pointed out to any of the prosecution witnesses by the defence that either Krishna Kumar Dutta or Chitra Ghosh or the people of the village or the police had any animosity against the accused or that they or anyone of them had any animous against the accused and any ill motive against the accused Asok Rose. Accordingly the present case comes within the principle as laid down in the case of State of Maharashtra (1992 Cri LJ 1924) (supra).

37. From a perusal of the judgment of the Trial Court it appears that the Trial Court approached the matter from a very wrong angle and he has appreciated and evaluated the evidence of the eye-witnesses not from a proper perspective and relied on contradictions of the witnesses not on material points but on points which are not at all relevant for the purpose of coming lo a proper decision. He had failed to notice that some of the witnesses saw blood marks on the wearing appearels of the accused before he was taken to the club room. There are other materials on record which do not lend support to the finding of the Trial Judge.

38. We, accordingly, set aside the judgment of acquittal of the Trial Court and direct the learned Sessions Judge, Howrah to examine the accused under Section 313(1) of the Code of Criminal Procedure and such question to he put to explain any circumstance appearing in evidence against him and then to hear the prosecution and the defence on the basis of materials already on record and then to write out a judgment according to law. He may also delegate the same to an Additional Sessions Judge within his jurisdiction to be nominated by him. This shall be done within a month from the dale of the receipt of the record of the case. He is directed to take necessary steps for surrendering the accused either before him or to the learned Sessions Judge whom he will nominate.

39. The appeal is, accordingly, allowed.

Vidya Nand, J.

40. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com