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Court : Kolkata

Decided On : Feb-26-1987

Reported in : 1988CriLJ1307

Judge : Jitendra Nath Chaudhuri and; Sudhanshu Sekhar Ganguly, JJ.

Appellant : Durga Singh and anr.

Respondent : The State

Judgement :

Sudhanshu Sekhar Ganguly, J.

1.This is an appeal from the judgment and order of conviction and sentence passed by Shri S.C. Dutta, Additional Sessions Judge, Fifth Court, Midnapore in S.T. case No. II of May, 1983 convicting both the appellants under Section 302/34 I.P.C. and sentencing both to imprisonment for life and also to a fine of Rs. 500/- in default to R.I. for one month each.

2. The prosecution case was that the two appellants along with twelve other accused way laid one Banabehari Pal at about 10/11 a.m. on 16-7-81 when the present two appellants assaulted him with a spade and an axe and killed him almost instantaneously. All the fourteen accused stood their trial before the learned Additional Sessions Judge Under Sections 302/34 and 120-B, I.P.C. on the evidence adduced from the side of the prosecution the learned Judge found

only the charge Under Section 302/34 I.P.C. established against only the present two appellants and he convicted and sentenced them in the manner stated above. Hence, this appeal.

3. It is urged from the side of the appellants that the evidence on record taken together with the medical evidence fell far short of establishing the prosecution allegation against the two appellants.

4. It is to be seen, therefore, if on the materials on record the learned Judge was justified in convicting and sentencing the appellants as stated above.

5. The FIR (ext. 1) was lodged in this case by Purna Chandra Pal (P.W. 1) the elder brother of the deceased Banbehari. From his evidence it appears that the brothers and their father Sripati Charan Pal (P. W. 12) had disputes with some of the accused persons viz. Tuna Singh, Babulal Singh, and Sukra Singh and Purna Dolui whose son is the accused, Ratikanta, over plot No. 1286 of mouza Dharimba, Sripati who claimed to be the bargadar of fifty decimals of this plot fought a suit with them over this land. The dispute has been pending before this Court at present as S.A. No. 52 of 1976. Sripati (P.W. 12) obtained an ad interim injunction therein (Exts. 2 and 3). The deceased Banbehari used to look after these proceeding's due to which the accused aforementioned could not take possession of the said land. Besides the accused Satya Sekhar Mondal suspected that Banbehari was behind the vesting of his lands in the State. Purna also says that Banbehari filed a criminal case against the appellant Durga Singh as he tried to harvest paddy from plot No. 1286 forcibly and this estranged the relation between the parties and the accused party threatened P.W. Purna and the members of his family with dire consequences. The prosecution case is that the murder of Banbehari was entirely due to the inimical feelings which the accused party developed against Banbehari and his family members.

6. Apart from the certified copies of the court-papers (Exts. 2 and 3) mentioned above, the prosecution has also exhibited a number of true copies of letters, allegedly addressed by the deceased Banbehari to the President and Prime Minister of India, District Magistrate, Superintendent of Police of Midnapore and other local authorities and the postal papers showing that the originals of these

letters etc. had actually been sent to the authorities mentioned above (Exts. 5 to 12). The records do not show that the originals of these letters etc. were actually called for from their respective addressees as required under Section 66 of the Evidence Act. In the circumstances stated we are not inclined to take these copies into our consideration. However, apart from the court papers (Exts. 2 and 3) there is oral evidence on the point of pre-existing enmity. There is evidence of Purna mention of which has already been made before. His father Sripati also says about the litigation which he had with the accused party over land and the complaint of the accused Satya Mondal that at the instance of the deceased Banbehari his land was made khas by the Government. There is hardly any cross-examination on these points. Relying on the materials on records - discarding though the copies of the letters (Exts. 5 to 12) mentioned above - it may be safely held that there was a pre-existing enmity between the parties. Enmity, however, is a double-edged weapon. It may be used for explaining as well from the side of the defence why the complaint had been lodged against the accused. In fact, it appears from the evidence of Ardhendu (P.W. 2) that Sripati (P.W. 12) and his sons Purna (P.W. 1), Kanai (P.W. 4) and the deceased were supporters of the C.P.I. whereas the members of the accused party including the present two appellants were supporters of the C.P.I. (M). Even granting that there was enmity between the prosecuting and the accused parties on account of party rivalry, it does not follow from that the evidence of the prosecution witnesses should be discarded because of that. For the law is well settled that the evidence of a partisan witness may be acted upon - even without corroboration - if his presence at the scene of the occurrence cannot be doubted, his evidence is consistent with the surrounding circumstances and the probabilities of the case and strikes the court as true; and, this more so if some assurance for the evidence of such a witness is available from medical evidence : Tameshwar Sahi v. State of Uttar Pradesh : 1976 CriLJ6 .

7. In the present case there is evidence to show the presence of the present two appellants and others at the alleged place of the occurrence, on the relevant date and time. This evidence is coming from Purna, Kanai, Srimanta K. Das and Sripati (P.Ws. 1, 4, 8, 12). Purna and Kanai (P.Ws. 1 and 4) brothers of the deceased noticed them there as they were going to Kharagpur on a bicycle that day sometime after 9 p.m. Srimanta (P.W. 8) a co-villager who was also going to

Kharagpur that morning saw them there. Sripati (P.W. 12) the father of the deceased claims seeing them there as he followed the deceased Banbehari and Hansaraj to the field. Both Purna and Sripati (P.Ws. 1 and 12) claim seeing the appellants, Sahadeb and Durga with an axe and a spade with them at that time.

8. On the point of the assaults on Banbehari there is evidence of two witnesses Ardhendu Sekhar Maity (P.W. 2) and Hansaraj Pal (P.W. 5) the latter the eldest son of Purna (P.W. 1) Ardhendu claims that he was going to his own field near the place of the occurrence that day between 10 and 11 a.m. when he noticed that the appellants Sahadeb and Durga Singh had pushed Banbehari down to the Test Relief Road. He also saw the appellant Durga assaulting Banbehari twice on his neck with a spade. Banbehari cried out to him for help but out of fear he ran back home and on way told Mana Singh (P.W. 3) the servant of the house of Sreepati what he had seen. He identified the spade (Ext. I) recovered and seized from a spot near the alleged place of the occurrence, as the one with which the appellant Durga had assaulted Banbehari. Hansaraj (P.W. 5) says that he accompanied Banbehari to the field that day after taking tiffin. They set out from the field for home for bringing the tiffin for their labours. When they came upon the T.R. Road, both the appellants Durga and Sahadeb pushed Banbehari down to the ground and assaulted him with a spade and an axe respectively. Banbehari cried out for help to Ardhendu (P.W. 2) but the latter hastened homewards. He (i.e. Hansaraj) also ran away towards the fields being threatened by the accused Sukra. He also identified the spade and the axe (Exts. I & II) seized in this case as the weapons of offence. How far these two witnesses and the others mentioned above may be relied upon?

9. So far as Ardhendu (P.W. 2) is concerned, the defence could hardly produce any reason why he should be disbelieved. It has not been established that he is a supporter of the C.P.I. or that he has any reason for being friendly disposed towards the appellants. It is not disputed that he had land near the place of the occurrence and the fact that transplantation was going on at that time makes his presence at the place of the occurrence at the relevant time very probable. Besides Mana Singh (P.W. 3) the servant of Sripati to whom he allegedly unburdened himself finding none other present at their house, corroborates him

fully. Mana Singh (P.W. 3) cannot be disbelieved simply because he happened to be the servant of Sreepati at that time. Besides, the evidence of Ardhendu is also borne out by medical evidence. Ardhendu saw appellant Durga hitting Banbehari twice on his neck with the spade. Post-mortem examination on the dead body of Banbehari revealed no less than three injuries on the right and two injuries on the left side of the neck (see evidence of Dr. Aftarbuddin P.W. 14 items 6, 7, 8 and 10 of the list of injuries) which according to the Doctor could have been caused by the spade or the axe seized in this case (Exts. I & II). Last but not the least, chemical examination revealed presence of blood on both the spade and the axe (Ext.17). On the one hand, therefore, no reason has been alleged or established as to why this witness should be disbelieved on the other hand his presence at the place of the occurrence at the relevant time has been probalised by his having land near the place of the occurrence. Besides, his evidence has also been corroborated by the evidence of other witnesses and medical evidence. In the circumstances stated we must hold that the learned Additional Sessions Judge made no mistake by placing his full reliance on him.

10. So far as Hansaraj (P.W. 5) is concerned he is corroborated to a great extent by Nemai Saren (P.W. 9) and Ardhendu (P. W. 2). His version that he accompanied Banbehari to the field that morning and that they both set out therefrom for home for bringing the tiffin of the labourers is corroborated by Nemai Saren (P.W. 9) a labourer who claims that he was labouring in Banbehari's land on that day. His version that Banbehari was pushed down to the ground by the two appellants when they reached the Test Relief Road, that the appellant Durga hit him with a spade and that Banbehari called out to Ardhendu to save him and that the latter instead of coming to his aid left for his home stands corroborated by the version of Ardhendu (P.W. 2). His version also stands corroborated by medical evidence and the report of the Chemical Examiner (Ext. 17). It also does not strike one as unlikely that he might have accompanied Banbehari to the field on that day. True he was not named by Ardhendu or in the FIR. Ardhendu must have been too flabbergasted to notice the presence of Hansaraj or anybody else not connected with the assault on Banbehari. The FIR was based upon what the informant Purna (P.W. 1) had heard from Mana Singh and Ardhendu (P.Ws. 2 and 3) and that explains the absence of the name of Hansaraj in the FIR. Similarly the fact that

Ardhendu names only appellant Durga Singh as the assailant whereas Hansaraj names him as well as Sahadeb as the assailants does not strike one as significant in view of the fact that Hansaraj stood almost at the place of the occurrence whereas Ardhendu stood at a distance and further that he continued to stay there even after Ardhendu turned homewards. Presumably the assault on Banbehari continued even after Ardhendu turned his back, for he saw Banbehari receiving only two blows whereas postmortem revealed no less than fifteen injuries on the deadbody of Banbehari excluding injury No. 4 which could have been caused by fall and treating the injuries on all the fingers of right and left palms as two injuries. Similarly the absence of Hansaraj when S.I. Rahaman (P.W. 15), the I.O. visited the village and his absence from the village from 17th to 19th July, 1981 have both been explained satisfactorily. Hansaraj (P.W. 5) himself says that he came back home from the field that day at about 4/5 p.m. when the police officer had already left the village. He also says and that is also the version of his father Purna (P.W. 1) that on 17-7-81 he was sent to his maternal uncle's place as it was feared that his life was in danger. Besides, it also appears that though a boy of only 14 he stood his cross-examinations quite well. These are the considerations which led the learned Judge to hold that reliance could be placed on this witness and we fully endorse his views.

11. Now since both Ardhendu and Hansaraj (P.Ws. 2 and 5) speak about the presence of both the appellants at the place of the occurrence, we are of the view that the evidence to that effect as deposed to by Purna, Kanai, Srimanta and Sreepati (P.Ws. 1, 4, 8 and 12) may also be accepted only for the purpose of establishing the presence of the two appellants at the place of the occurrence since before the time of the incident.

12. The evidence of Ardhendu and Hansaraj (P.Ws. 2 and 5) taken together shows that the present two appellants hit and injured Banbehari with an axe and a spade. The learned Advocate for the appellants refers to the evidence of Dr. M. Aftabbuddin (P.W. 14) who has described all the injuries, found by him on the dead body of Banbehari as lacerated injuries and he argues that the Doctor's opinion totally belies the evidence of Ardhendu and Hansaraj (PWs. 2 and 5). The findings of the Doctor as regards the injuries found by him on the dead body of

Banbehari are reproduced below for appreciation of the point raised by the learned advocate.

On examination I found the following:

I. Fracture of the left wrist joint.

II. Lacerated wounds on the left palmer surface of the fingers

a) Little finger - 1/2' X 1/2' muscle deep.

b) Ring Finger - 1/2 X 1/2 X muscle deep.

c) Middle finger - 1/2' X 1/2 muscle deep.

d) Index finger 1/2' X 1/2' X muscle deep. All are transversely placed.

e) Base of the thumb of palm 2' X 1/2' X muscle deep.

III. Lacerated wound of the right palmer surface of the fingers:

a) Palmer surface of the little finger 2' X 1/2' X muscle deep-transversely placed.

b) Middle finger - 1/2' X 1/2' X muscle deep - transversely placed.

c) Index finger - 1/2' X 1/2' muscle deep transversely placed.

IV. Abrasions two in number each 6' X 6' pteced like a cross over the right scapulae

V. Anterior surface of the left arm upperthird 1/2' X 1/2" muscle deep.

VI. Lacerated wound right side below and behind the mastoid bone 3' X 2' bone deep at the level of the second cervical vertebra.

VII. Lacerated wound 2' X 1' bone deep- 1/2' below the injury No. 6.

VIII. Lacerated wound 4' X 1' bone deep- 1/2' below injury No. 7. Injuries 6, 7 and 8 have cut all the muscles, vessels, nerves and partly bone.

IX. Middle of the right shoulder lacerated wound 1 1/2' X 1/2' muscle deep.

X. Lacerated wound on the left side of the neck these are closed and repaired.

a) 4' X 1 1/2' muscle deep and another 1/2' below 3 1/2" X 1/2' muscle deep. It has cut the muscles, vessels and nerves.

XI. Below the angle of the right side of the mandible lacerated wound 2' X 1' muscle deep.

XII. 2 lacerated wounds 1 1/2' X 1/2' muscle deep close to right nipple.

XIII. Lacerated wound inner side of the right arm 1/2 X 1/2' muscle deep.

XIV. Lacerated wound 2' X 1/2' muscle deep outer side of the right arm. All wounds show signs of inflammation and repair.

13. According to the Doctor shock, haemorrhage and injuries on the vital organs caused death in this case. The injuries referred to by the Doctor as injuries on the vital organs must be the ones described in serial Nos. 6 to 8 and 10. One ordinarily would have expected the injuries to be described as incised injuries since they cut all the muscles, vessels and nerves and in the case of injuries 6 to 8 partly even bone. The Doctor, however, insisted that these injuries were all lacerated in nature. Be that as it may, we are of the view that it is the findings of the Doctor as regards the injuries and his opinion as to the effect thereof on the injured is what matters and not the name by which the Doctor has described the injuries. Incised or lacerated the injuries - so opined the Doctor - caused the death in this case and that is what matters and if the injuries can be traced back to the appellants, they must be held liable. It may be added here that according to the Doctor even though lacerated injuries can be caused by hard and blunt substance such as bamboo lathi, they can also be caused by heavy sharp cutting weapons such as the spade and the axe (Exts. I & II), seized in this case. He was further of the definite opinion that the aforementioned injuries (i.e. Sl. Nos. 6 to 8 and 10) and a few others viz. Sl.Nbs. 1, 2, 3, 9 and 11 could be caused by the spade and axe exhibited in this case (Exts. I & II). We are not entering into any controversy as to whether the injuries to the vital organs in this case could be described as

lacerated or incised injuries since the Doctor, notwithstanding that he has described the said injuries as lacerated injuries, says unequivocally that they might be caused by heavy sharp cutting weapons such as the spade and axe (Exts. I & II) seized and exhibited in this case, In the circumstances stated we are not inclined to find any merit in the argument of the learned Advocate for the appellants in this regard.

14. The learned Advocate for the appellants argues next that in any case Sahadeb's case is different from that of the appellant Durga Singh and that as such he should have received a different treatment from the learned Judge.

15. He points out first that Ardhendu (P.W. 2) does not say that Sahadeb also injured Banbehari and further that even if Hansaraj (P.W. 5) does that he is contradicted by the medical evidence as he says in his cross-examination that both the appellants used sharp edges of their weapons of offence while assaulting Banbehari. We have already considered both the points and decided them against the appellants.

16. The learned Advocate urges next that an axe is not a heavy instrument whereas the injuries were pointed to have been caused by heavy sharp cutting weapon and he argues that none of the injuries in question could have been caused by Sahadeb. We are not inclined to agree with this argument of the learned Advocate also. Axes may be and in fact they are of various sizes and weight. There are smaller and lighter ones which are meant to be used by one hand only. But there are also bigger and heavier ones which are meant for being used by both hands. The axe exhibited in this case (Ext. II) must be of the latter variety since even the Doctor (P.W. 14) who had the opportunity so seeing it, accepts it as a heavy sharp cutting weapon. The learned Advocate argues next that even taking the worst view Sahadeb wanted only to assault Banbehari and not kill him. We do not see how can we agree with him. It is true, the Doctor (P.W. 14) says that the injuries Nos. 5, 12, 13 and 14 might have been caused by an axe. These were not so serious injuries, nor caused on any vital part of the body. But then how are we to know that only these injuries were caused by the appellant Sahadeb? As stated above according to the Doctor all the injuries 1, 2, 3, 6, 7, 8,

9, 10 and 11 could have been caused by the spade and axe (Exts. I & II) seized in this case. How to conclude that one of the injuries on the vital organs was not inflicted by the appellant Sahadeb?

17. Besides the charge in this case is one Under Section 302/34 I.P.C. The evidence on record clearly establishes that both the appellants together pushed Banbehari down to the road and both assaulted him with spade and axe. Death was caused as a result of the joint endeavour of both the appellants and they both must be made responsible for all the injuries caused to the deceased. One of them now cannot be heard to say that he, in fact, wanted to inflict lesser injuries to the deceased and had never intended to kill him.

18. To sum up:

I. It appears from the evidence of Purna, Kanai, Srimanta and Sreepati (P.Ws. 1, 4, 8 and 12) that the two appellants were present at the place of the occurrence on the morning of the day of occurrence.

II. It appears from the evidence of Ardhendu and Hansaraj that both the appellants pushed Banbehari down to the road and slashed him up with a spade and an axe.

III. Banbehari's dead body lying in a pool of blood was actually recovered from the spot with multiple injuries on it.

IV. Medical evidence establishes that Banbehari's death was due to the injuries suffered by him on the vital parts of his body, and further that

V. The said injuries could have been caused by the spade and axe (Exts. I & II) seized in this case.

VI. Blood was detected on both the spade and axe (Exts. I & II) indentified as the weapons of the offence used by the two appellants.

19. In view of the conclusions derived from the evidence we are of the opinion that the learned Judge did nothing wrong by finding the two appellants guilty Under Section 302/34, I.P.C. and sentencing them to imprisonment for life.

20. The present appeal must therefore, fail.

21. The appeal is therefore, hereby dismissed. The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Midnapore in Sessions Trial No. II/May/83. are hereby confirmed. The appellants do submit to their bail bonds and serve out the sentence.

Jitendra Nath Chaudhuri, J.

22. I agree.

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