Subhas Barman Vs. the State

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Court : Kolkata

Decided On : Dec-09-1987

Reported in : 1988CriLJ1651

Judge : Jitendra Nath Chaudhuri and; Amal Kumar Chatterjee, JJ.

Appellant : Subhas Barman

Respondent : The State

Judgement :

Amal Kumar Chatterjee, J.

1. In this appeal against conviction of the. appellants, six in number, under Section 304, Part I, I.P.C. read with Section 34 thereof for committing culpable homicide not amounting to murder of one Kala Chand Paul of village Sikarpur within Mathabhanga P.S. as a result of injuries inflicted on him by lethal weapons such as spear, dagger, etc. at about 1/1.30 a.m. on the 30th May 1979, the only point for determination is whether the participation of the appellants or any of them has been proved beyond reasonable doubt in the circumstances as under.

2. The deceased Kala Chand Paul used to live with his wife Prativa Paul (P.W. 4) and 5 daughters Bharati (P.W. 2), Gangarani (P.W. 3), Jharna (P.W. 5), Rita (P.W. 6) and Jamuna (P.W. 7) and in the night of the incident, it was said, that they were all awakened from sleep by the noise of knocking at the door and although an

effort was made to hold back the door from inside, a portion of it in the upper side gave way and through the hole thus opened, the appellants assaulted Kalachand with the weapons stated inflicting bleeding injuries on the temporal region, chest and abdomen. Jharna (P.W. 5) lit a lamp and raised it to some height and in its light, she could recognise two of the appellants, namely, Subhash Barman and Subhash Sarkar known to them from before. Gangarani (P.W. 3) recognised the appellant Sanjib Barman among the miscreants while Rita (P.W. 6) could recognise the appellant Satyen Saha. The two remaining appellants, namely, Arun Paul and Niranjan, were recognised by Jamuna (P.W. 7). After inflicting the injuries, the miscreants left the place and in the following morning at about 7 a.m. Jharna (P.W. 5) took her father Kalachand to Sikarpur Choupathi on foot and from there in a cycle rickshaw to the place of her uncle Haran Chandra Paul (P.W. 1) at Mathabhanga. Haran (P.W. 1) took Kalachand to the Police Station where he wished to lodge a written complaint but it was notrecorded. Thereafter Kalachand was taken to the local Primary Health Centre where Dr. B. Banerjee (P.W. 13) after some: first aid sent Kalachand to the hospital at the District Head Quarter where he died on the 2nd June, 1979. Haran (P.W. 1) lodged FIR (Ext. 1/1) at the police station on the 31-5-79 in the afternoon.

3. The defence of the accused persons appeared to be that they were Congress workers and were falsely implicated at the instance of some members of a rival political party.

4. The learned Trial Judge considering the evidence was of the opinion and accordingly found that the charge under Section 304 Part I, I.P.C. read with Section 34 thereof was brought home against all the accused persons and they were convicted and each sentenced to suffer rigorous imprisonment for 10 years and also to pay a fine of Rs. 500/- in default to suffer rigorous imprisonment for 5 months more.

5. Kalachand Paul, as already noticed, was first taken to the Primary Health Centre at Mathabhanga where he was examined by Dr. B. Banerjee (P.W. 13) who rendered him some first aid and forwarded him to the hospital at District Headquarters. Now it does not appear that Kalachand was not in a position to

speak and indeed it is in the evidence of Jharna (P.W. 5) that she took her father from their house upto a certain distance on foot and thereafter in a cycle rickshaw to the place of her uncle Haran (P.W. 1) at Mathabhanga where the deceased reported the incident to the aforesaid witness without, however, naming any assailant. In such circumstances, it can be reasonably said that the condition of Kalachand was not such which would prevent him to speak when he was taken to the Primary Health Centre via the Police Station. But, in spite of it, no action was taken for having a dying declaration recorded. This throws a great deal of suspicion on the case of the prosecution at least so far as the involvement of the appellants is concerned.

6. Now, Jharna (P.W. 5) though claimed to have recognised at least two of the appellants, namely, Subhash Barman and Subhash Sarkar, among the miscreants does not appear to have disclosed such recognition to anybody soon after the incident. If really she could recognise the aforesaid two appellants, as given out by her, the most normal conduct would be to disclose it to her father Kalachand and also to her uncle Haran (P.W. 1) and the same would also find place in the First Information Report (Ext. 1/1) lodged by him. Thus the omission of name of any of the appellants in the FIR lodged by Haran and in his testimony even after he had occasion to meet at least one of the daughters of the deceased claiming to have recognised two of the appellants, is significant and since no satisfactory explanation is forthcoming for such omission, further doubt is cast upon, the prosecution case. Reference may also be made in this connection to the testimony of Prativa (P.W. 4), the wife of the deceased, that Jharna did not tell anybody that she had recognised some of the miscreants. Thus though this witness stated that she recognised Subhash Barman and Subhash Sarkar the miscreants there is no satisfactory corroboration of her testimony and we consider it absolutely unsafe to convict them on a bald statement of this witness. It is no doubt true that a statement of Jharna (P.W. 5) was recorded by the Magistrate Sri A. Gani (P.W. 17) under Section 164, Cr.P.C. but the evidence of the Magistrate discloses that such statement was recorded by him on the 12th July, 1979, that is to say, about 6 weeks after the incident. The learned Trial Judge appeared to have taken the view that the delay in recording the statement under Section 164 Cr.P.C. was of no consequence in the instant case as the statement under Section 161, Cr.P.C. was

recorded soon after the occurrence. We are unable to appreciate this observation of the learned Judge because if it were so, it-would be within the power of the Investigating Agency to postpone recording the statements under Section 164, Cr.P.C. by a Magistrate indefinitely which is by no means the law. It is also noteworthy in this connection that Jharna (P.W. 5) was asked in her cross-examination whether any member of the Communist Party of the village were with her and her sisters and mother when they were taken to the Magistrate for recording statement under Section 164, Cr.P.C. to which she expressed her inability to give an answer. If really no member of the Communist party accompanied them when they were taken to' the Magistrate, there is no reason why she should not be able to give a specific and not a vague answer. Therefore, it lends some support to the defence suggestion that the case has been engineered at the instance of a rival political party. So the evidence on record falls short of proving the guilt of the appellants Subhas Burrnan and Subhas Sarkar beyond reasonable doubt.

7. Regarding other apellants also, the evidence is weak and inadequate to sustain conviction of any of them. Gangarani(P.W. 3) claimed to have recognised the appellant Sanjib Burman among the miscreants but she too did not disclose about the recognition to anybody in the night of incident as admitted by her in cross-examination. She has, however, deposed that she spoke about her recognition to her uncle Haran (P.W. 1) before he went to the police station for lodging the First Information Report and also to the Magistrate who had recorded her statement under Section 164, Cr.P.C. Now, Haran (P.W. 1) does not corroborate her by stating that he was ever told by Gangarani(P.W. 3) about recognition of any of the miscreants. This witness (P.W. 3) was also unable to say whether any of the miscreants had covered their heads or anything about their wearing apparel. The statement under Section 164, Cr.P.C. made by her cannot also be regarded as a satisfactory corroboration of her testimony in court for the reasons indicated in the preceding paragraph. In such circumstances the evidence of Gangarani (P.W. 3) does not inspire confidence and cannot bring home the charge against the appellant Sanjib Burman.

8. Regarding recognition of appellant Satyen Saha by another daughter Rita (P.W. 6), it appears that she also did not tell anybody about recognition although she had no doubt enough opportunity for such disclosure. It was her further evidence that the miscreants fled away as soon as the lamp was lit and, therefore, it seems that she had opportunity to see the miscreants, if at all, only for a very short time. In such situation her uncorroborated testimony cannot be considered as enough to incriminate the appellant Satyen Saha. It is only a repetition to mention that the statements recorded by Magistrates under Section 164, Cr.P.C., once on the 12th July 1979 by Sri A. Gani (P.W. 17) and again on the 10th Jan. 1980 by Sri K.D. Mukherjee (P.W. 18) cannot corroborate her testimony in court mainly because of the long interval between the incident and the recording of statements.

9. Jamuna Paul (P.W. 7) claimed to have recognised the two remaining appellants, namely Arun Paul and Niranjan. Her evidence too must be rejected as lacking in corroboration because she too without any explanation whatsoever has not stated to anybody that she could recognise the aforesaid two appellants among the miscreants.

10. The learned Trial Judge has apparently overlooked that the incriminating testimony of the witnesses were not corroborated in material particulars and he has observed that the evidence of witnesses corroborated each other in so far as the incident itself was in question. The learned Trial Judge was expected to satisfy himself that the evidence of witnesses corroborated each other not only regarding the incident but also about the participation of the appellants therein. Therefore, the conviction of the appellants cannot be upheld and the learned Judge ought to have held that their guilt was not proved beyond all reasonable doubt.

11. Mr. Mondal appearing on behalf of the State has tried to support the conviction by arguing that the inmates of the house of Kala Chand were extremely scared which was evident from the fact that they did not dare to leave the house soon after the incident. and it was because of such fear that no disclosure about recognition was made to anybody. Now, even assuming that the witnesses were scared, it does not explain while on disclosure would be made among themselves or to Baran (P.W. 1) at any time whether before or after the First Information

Report was lodged. Further none of the witnesses gave out even during their evidence in court that they did not disclose the names of the miscreants recognised by them on account of fear. Indeed there is hardly any evidence on record to suggest that the witnesses were so much scared that they would' refrain from reporting to anybody about the recognition. It is no doubt true that Kala Chand was not taken to the Primary Health Centre in the night of occurrence but since Kala Chand suffered only two skin deep injuries, one in the temporal region and the other in the right chest wall besides a small penetrating wound on the ileum, as disclosed by the evidence of Dr. B. Sarkar (P.W. 14) and Dr. D.C. Mukherjee (P.W. 19), the inmates of the house probably did not consider the condition of the patient to be so serious as to merit immediate attention and removal to any hospital. It has also been pointed out, as deposed by Jharna (P.W. 5) that even in the following morning at about 7 a.m., Kala Chand walked for some distance before boarding a cycle rickshaw on way to the place of Haran (P.W. 1), In view of such evidence it cannot be said that the inmates of the house of Kala Chand were scared which was evident from the fact that no medical aid was rendered to him soon after the incident.

12. The learned advocate for the State has tried to derive support from certain observations of the Supreme Court in Liyakat Mian v. State of Bihar : 1973 CriLJ584 . The learned Judges of the Supreme Court had quoted in paragraph 7 at page 810, an observation of the High Court that certain witnesses could not have been in such a frame of mind as to discuss about the names of the culprits before one of them had lodged the First Information Report. The learned advocate for the State had argued that in the case before us too, the inmates of the house of Kala Chand were in no frame of mind to discuss about the names of the culprits which explained nondisclosure to Haran and consequent omission in the First Information Report. The decision of the Supreme Court is by no means an authority for any general proposition that non-disclosure of the names of culprits by the witnesses who claimed to have recognised them need not arouse any suspicion. It appears from the judgment of the Supreme Court that although the informant who was not a witness to the occurrence, did not mention the name of any culprit in the First Information Report lodged by him, still he did mention that the culprits in the First Information Report lodged by him, still he did mention that

the culprits have been identified by some women inmates of the house where the crime was committed. In that case the High Court had also accepted the evidence of another witness who was injured in the incident and a dying declaration which was considered to be trustworthy. Thus, the evidence in the case before the Supreme Court being very much different from that in the case before us, the ruling cited by the learned advocate for the State is of no assistance to him.

13. The learned advocate for the State has referred to another decision of the Supreme Court in Apren Joseph v. State of Kerala : 1973 CriLJ185 in order to support his argument that the delay in lodging the First Information Report cannot be regarded as fatal to the case of the prosecution. In the case before us there was no doubt some delay in lodging the First Information Report but it is not considered to be fatal to the case of the prosecution because Haran (P.W. 1) has stated in examination-in-chief that he took Kala Chand to the police station in order to lodge a diary but the police officer did not record his statement but instead gave him a slip and asked him to go to hospital Thereafter, the witness further said, he took Kala Chand to the hospital at Mathabhanga from where he was referred to the hospital at the Headquarters of the District. Such evidence was not challenged in the cross-examination and thus some explanation has been offered for delay in lodging the Firs,t Information Report. Moreover a belated FIR can ordinarily give rise to suspicion in the mind of a tribunal if the name of any accused is mentioned therein. In the instant case there being no disclosure of the name of any accused in the First Information Report it does not create any suspicion regarding the case of the prosecution because of delay in lodging the same. However, the prosecution having failed to bring home the charge beyond reasonable doubt on other ground, the conviction and the sentence as passed by the learned Trial Judge cannot be upheld.

14. The appeal is, therefore, allowed. The conviction and the sentence as passed by the. learned Judge are set aside and the appellants are found not guilty and are acquitted. Appellant No. 3 Arun Paul be set free at once. Rest are discharged from bail bond. Record be sent down at once.

Jitendra Nath Chaudhuri, J

15. I agree.