

Santosh Kumar Sarkar Vs. State

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Court : Kolkata

Decided On : Dec-23-1987

Reported in : 1988CriLJ1828

Judge : J.N. Chaudhuri and; A.C. Sengupta, JJ.

Appellant : Santosh Kumar Sarkar

Respondent : State

Judgement :

J.N. Chaudhuri, J.

1. Criminal Appeal No. 84 of 1984 arises out of a conviction under Section 302, I.P.C. and the sentences for imprisonment for life and a fine of Rs. 5,000/-, in default R.I. for six months. The amount of fine, if realised, was directed to be paid to the near relations of the victim. The trial was held by the learned Additional Sessions Judge, 3rd Court, Jalpaiguri, being Sessions Case No. 8 of 1983.

2. The prosecution case, in short, is as follows:

On 7th Mar., 1981 the deceased Dinesh Sarkar, the accused Santosh Sarkar, Manindra Sarkar, Harendra Sarkar and many others gathered in the house of Manindra Sarkar at the village Harinathpur, P.S. Falakata. They had been discussing the marriage of one Yosada Sarkar. The complainant Mahim Chandra

Sarkar started preparing a list of articles and expenses connected with the marriage. At that time Dinesh Sarkar cried out in pain. It was seen that the accused Santosh Sarkar was holding a knife in his hand and he had stabbed Dinesh Sarkar on his hand. Dinesh leapt up and started running away. The accused Santosh Sarkar chased him. He outpaced Dinesh under a jackfruit tree situated near the house of Manindra Sarkar and stabbed him on his back by the knife. As a consequence Dinesh fell on the ground. Even then Santosh stabbed Dinesh again on his arm. Meanwhile the persons who had gathered in the meeting started a chase with a view to apprehend the accused I Santosh Sarkar. Santosh Sarkar started brandishing the knife to keep them at bay. i However, Yasoda picked up a bamboo stick and struck Santosh on his hand. Due to the i blow the knife flew off the hand of Santosh and fell on the ground. Thereafter, Santosh was caught. His hands were tied on the back by means of a rope and he was detained at the spot. The injured Dinesh was taken to the Falakata Public Health Centre where he succumbed to his injuries. Manindra lodged an F.I.R. with the police. The police came and seized the knife. The deadbody of Dinesh i was sent for post-mortem examination to Alipurduar Sub-Divisional Hospital. After investigation the police submitted charge-sheet under Section 304, I.P.C. against the accused, Santosh Sarkar.

3. The defence case, as disclosed from the trend of the cross-examination of the prosecution witnesses and the statements of the accused under Section 313 of the Cr.P.C, is one of denial. It is the positive story of the defence that the accused Santosh Sarkar was not present at the place of occurrence. There was an alternative case in the defence suggestion that on the date of the occurrence the accused, Santosh Sarkar was of unsound mind

4. The witnesses examined by the prosecution can be divided into different groups. P.W.s 1, 2, 3 and 5 are eye-witnesses to the occurrence. The P.Ws. 8 and 12 are witnesses immediately after the occurrence. The P.W. 9 is the post-mortem Surgeon who held autopsy in respect of the dead body of Dinesh Sarkar. P.W. 16 is the first investigating officer of the case who practically did everything. P.W. 17 is the subsequent investigating officer who only completed the investigation and submitted charge-sheet. The prosecution tendered a number of local witnesses for

cross-examination. Such witnesses are P.Ws. 4, 6, 7, 10, 11, 13, 14 and 15. None of such witnesses was cross-examined by the defence.

5. P.W. 1, Mahim Ch. Sarkar, has deposed that he knew the deceased Dinesh Ch. Sarkar of his village, as also the accused Santosh Ch. Sarkar. On 7-3-81 at about 9 A.M. he was called to the house of P.W. 2 of the same village, Harinathpur to hold a discussion regarding the marriage of one Pran Kumar Sarkar. RWs. 2, 3, 10, 11, the deceased and the accused along with many others were present at the outside out house of P.W. 2 where the discussion was held. Suddenly, the victim Dinesh Sarkar shouted 'Ooh' and on raising his head the witness saw the appellant stabbing Dinesh on his arm with a dagger. Dinesh got up and started running towards he south being chased by the appellant with a dagger in his hand He saw the appellant stabbing Dinesh on his back with the said dagger under a jackfruit tree situated to the ast of the house of P.W. 2. Dinesh fell on the ground, but the appellant again stabbed inesh on his hand. The witness identified in Court the knife (Ext. I) which was shown to im in Court as the weapon with which the appellant had stabbed Diriesh. After Dinesh hl been stabbed by the appellant the witness along with P.Ws. 3, 5, 6, 7 and others ran towards the appellant to catch him, but the appellant brandished the knife in the air. P.W. 5 struck the appellant on his hand with a bamboo stick and the knife fell from his hand on the ground. Thereafter, P.Ws. 3, 5, 6,7, the witness and others caught hold of the appellant who was tied with a rope and detained by them. Thereafter, P.Ws. 8, 13, 14 and 15 carried the injured Dinesh to Falakata Hospital. The witness went subsequently to the hospital and found Dinesh had succumbed to his injuries. Thereafter, the witness went to Talakata Police Station and lodged the F. I. R. which was recorded by the police and signed by him after being read over to him (Ext. 1).

6. The police went to their village and took away Dinesh who had been kept detained in bound stage. After untying him and handcuffing him the police officer seized the knife (Ext. 1) and the police examined witnesses.

7. In cross-examination, he stated Dinesh at the material time was wearing a dhuti, a vest and the wrapper. Village Harinathpur is seven kilometers away from Falakata P.S. andean be reached by cycle rickshaw or bus. He denied that they

had been sitting in the inner courtyard of the house of P.W. 2 and maintained that they were sitting in the outer courtyard outside the outer house. He also denied that the appellant was not present in the meeting. They could not catch the appellant in spite of chase, immediately on chase since he was brandishing knife. The jackfruit tree was about 20/25 cubits away from the place where they had been sitting. Blood did not fall on the spot where the appellant first assaulted Dinesh. He could not mark whether blood fell in between the; place where Dinesh was first stabbed and the spot under the jackfruit tree. At the time i when the appellant stabbed Dinesh on his i back none of the witnesses was very close to those two. Blood fell under the jackfruit tree, but he could not say whether small or a good quantity of blood fell there. They chased the appellant for the purpose of catching him under the jackfruit tree. The appellant brandished the dagger, but could not successfully elude them since he was encircled by the witness and others. He could not say what was the length of the bamboo stick with which P.W. 5 struck the appellant on his hand (the witness indicated by his finger, an average bamboo). He could not say what happened to the bamboo stick used by P.W. 5. The knife which fell from the hand of the appellant remained there on the ground and the police officer seized the same on his arrival. He could not say what happened to the rope With which Santosh had been tied. The police officer took away the appellant by handcuffing him after untying the rope. The witness denied that his whole narration regarding the incident was false and that the appellant did not stab Dinesh. He could not say whether the appellant had been of unsound mind before the date of the occurrence, nor whether the appellant was raving mad on the date of the occurrence. He denied that the appellant had been falsely implicated in this case.

8. P.W. 2, Manindra Ch. Sarkar has deposed on lines similar to that of P.W. 1. At about 9 A.M. on the date of incident, which was a Saturday, a meeting was held in his house regarding the marriage of Yosada, the brother of Pran Kumar. The meeting was being held in the courtyard outside his out house and after discussion, P.W. 1 started preparing a list. At the meeting P. Ws. 1,8, 11, 13, 14, 15 and others including the appellant and the victim Dinesh Sarkar were present. While P.W. 1 was preparing a list, suddenly the appellant stabbed Dinesh on his arm with a knife. Dinesh cried out 'Ooh' in pain and started running towards the

south, but the appellant ran after him and stabbed him on the back with the knife under a jackfruit tree situated to the east of P.Ws. 2 outhouse. Dinesh on receiving injury fell on the ground, after which the appellant again stabbed him on his hand with the knife. Thereafter, P.Ws. 1 and 3 went to catch hold of the appellant when the appellant started brandishing bloodstained knife. P.Ws. 5, 6 and 7 and others rushed there and P. W. 5 struck a blow on the hand of the appellant with a bamboo stick, as a result of which, the knife fell on the ground. P.Ws. 8, 13, 14 and 15 took the injured Dinesh to Falakata hospital where Dinesh succumbed to his injuries. The knife which the appellant used in stabbing Dinesh was about 10' in length. The witness identified the knife (Ext. 1) as also the appellant in Court. The police went there and seized the knife under a seizure list (Ext. 2) which he signed. The police officer interrogated the witness and others.

9. In cross-examination, he denied that the appellant was not present at the meeting and that he did not see the appellant stabbing Dinesh with a knife. Blood did not fall at the place where the appellant first stabbed Dinesh, nor was there any trail of blood up to the jackfruit tree which was 20/25 cubits away from the place where the meeting was being held. He did not know whether the appellant had been suffering from unsoundness of mind before the incident, but it was not a fact that he was of unsound mind on the date of the incident. He was of sound mind. On the knife (Ext. 1) being shown by the learned Advocate for the defence to the witness he answered that 'the appellant had purchased this knife, although he could not say when such purchase had been made'. The knife was seized by the police officer from the spot where it had been lying after the same fell from the hands of the appellant on being struck with a bamboo stick by P.W. 5. He denied that he had falsely implicated the appellant.

10. P.W. 3, Pran Kumar Sarkar, the nephew of P.W. 1, has corroborated P.Ws. 1 and 2 regarding the incident including the place of the incident, the time of incident, the presence of the appellant, the victim and other witnesses and the manner in which the appellant stabbed Dinesh initially and again after a chase twice under the jackfruit tree, and finally the manner in which the appellant was ultimately apprehended there and then, after P.W. 5 struck the appellant on his hand with a bamboo resulting in the dropping of the knife on the ground from the

hand of the appellant. The spot where the knife fell was 2/3 cubits away from the place where the appellant was at that time and the knife fell on cultivated land. The witness identified the appellant and the knife (Ext. 1) in Court.

11. In cross-examination, he stated that there was blood on the ground under the jackfruit tree, but blood did not drop on the ground while Dinesh was running. He denied that the appellant had lost sanity before the date of occurrence, or that he was insane on the date of occurrence. He was quite sane before and on the date of occurrence. He denied that the entire story of his observing the assault by the appellant on Dinesh was false or that it was false to say that they caught hold of the appellant and tied him up.

12. P.W. 5, Yasoda Sarkar alias Gobinda, is the person regarding whose marriage the meeting was being held in the outer courtyard of P.W. 1's house. He is the younger brother of P.W. 2 and both P.Ws. 2 and 5 reside in the same premises of P.W. 1, but are separate in mess from P.W. 1. Out of modesty since his own marriage was being discussed he was standing a little away from the meeting which was being attended by the appellant, the deceased, P.W. 3, P.W. 1 and the others mentioned by P.Ws. 1, 2 and 3. He suddenly heard the victim Dinesh crying out in pain 'Ooh' and on looking up he saw that the appellant was aiming at Dinesh. The appellant had a knife with him and under a jackfruit tree to the east of the house the appellant stabbed Dinesh on his back with the knife. At that time, P.Ws. 1 and 3 were chasing the appellant. After the appellant had stabbed Dinesh others collected in the vicinity. The appellant started brandishing the knife, but the witness finding a bamboo stick ran up with it and struck the appellant on his hand with the same, as a result of which, the knife flew out of the hand of the appellant. Thereafter, the witness P.Ws. 1,3 and others caught hold of the appellant and tied up his hand behind his back. They encircled the appellant and detained him. Dinesh was sent to Falakata hospital and P.Ws. 8, 13, 14 and 15 went with Dinesh. The witness identified the appellant in Court as also the knife(Ext. 1) as being the knife, as it seemed to him to be the one which was in the hand of the appellant at the time of the assault. P. W. 1 went to the police station and lodged the F.I.R. Police came to the place of the incident on the same day and examined P. W. 5 and other witnesses, seized the knife arrested the accused and took him

away.

13. In cross-examination, he denied that he did not see the appellant at the meeting and that he had falsely implicated him in this case. He denied that the appellant was of unsound mind before and on the date of the incident.

14. P.Ws. 8 and 12 are post-occurrence witnesses, P.W. 12 being the son of the deceased. P.W. 8, a resident of Harinathpur, Falakata has deposed that the appellant used to work as a Gangman in Falakata in the Railways. At about 9.30 A.M. on the day of the incident, on hearing a commotion coming from the house of P.W. 2 he went there and found Dinesh Sarkar lying unconscious in an injured condition, by the side of a jackfruit tree. He found the appellant there in a tied-up condition. He found the knife, Ext. 1, smeared with blood and earth lying on a cultivated land, the knife being about 10' long. The police came there at about 11.30 A.M./12 noon and seized that knife in his presence, prepared a seizure list and he signed on the same as a witness, (seizure list is Ext. 2).

15. In cross-examination, he stated that he was the maternal cousin of P.W. 1. P.W. 1 is the nephew of P.W. 2. He denied that the knife (Ext. 1) had not been seized.

16. P.W. 12 at the material time being an examinee for the Madhyamik Examination was reading when at about 9 A.M./9.30 A.M. he heard his name being called He immediately rushed to the spot outside the outer house of P.W. 2 as he saw people running to that place. On going there, he found his father Dinesh Sarkar (the victim) lying under a jackfruit tree near the house of P.W. 2. His father was bleeding. He also found the appellant there with his hands tied by a rope. He found the knife (Ext. 1) smeared with blood and earth lying on a cultivated land below the jackfruit tree. P.Ws. 13,14, 15 and the witness carried the injured Dinesh to Falakata hospital where Dinesh died. P.W. 1 informed the police station. When the police came to the place where the incident had occurred the witness was not present since he had gone to the hospital. He could not remember whether he was examined by the police.

17. In cross-examination he stated that he could not say how long after taking Dinesh to hospital he died, since he was not in the proper mental condition to notice the same. Falakata hospital is about 5/6 K.Ms, away from Harinathput. He could not say how long it took to carry Dinesh to the hospital, but by guess it would take about 45 minutes for that journey. It was brought on record that this witness did not tell the police that he had seen his father under a jackfruit tree in a bleeding state and that he had seen a knife on the ground smeared with blood and earth. He denied that the appellant had been found by him with his hands tied-up by a rope. He stayed in the hospital till afternoon and then returned home. He denied that he had deposed falsely.

18. P.W. 9, Dr. Arup Mukherji, a Gyanocologist, attached to the Sub-divisional hospital at Alipurduar, held the post-mortem examination on the dead body of the victim Dinesh Sarkar at 2 P.M. on 8-3-81 being brought and identified by the constable No. 81, Raghu Singh. The dead body was stout and on examination, he found one stab wound on the left side just at the level of the subcostal margin on the back (below the ribs) of about 2' X 1/2' as also one sharp cutting wound skin deep on the left elbow. On dissection, he found the spleen and had a sharp cutting wound of about 1' X 1/2' on the hilum. In his opinion, the said injuries could have been inflicted by a sharp cutting weapon, such as knife (Ext.,1). The spleen injury was sufficient to cause death in the ordinary course of nature, but the death might not have been instantaneous for that would depend upon the amount of bleeding. The death was due to shock and haemorrhage as a result of the said injuries which were anti-mortem and homicidal in nature.

19. In cross-examination, in answer to suggestion that the injury in question if attended by a surgeon in time might not have caused death of the victim his answer was 'it is difficult.'

20. P.W. 16, S.I. P.K. Dutta is the Investigating Officer. On 7-3-81 at 11.15 A.M. he was incharge of Falakata P.S. At that time, P.W. 1 lodged an information which was recorded by the witness and signed by him, as well as by P.W. 1 after the contents had been read over to him and P.W. 1 had admitted the contents to have been correctly recorded - Ext. 1. The O.C. endorsed this case which was started

under Section 304, I.P.C. to him for investigation. He visited the house of P.W. 1 at Harinathpur and found a large number of persons gathered there. There, he found the appellant with his hands tied up by rope, as also a knife (Ext. 1) smeared with blood and dust lying on a piece of cultivated land. He arrested the appellant there and then and also seized the said knife under a seizure list in the presence of P.Ws. 1 and 12. He prepared a sketch map with index (Ext. 3). Immediately after arresting the appellant he went to Falakata P.H.C. There he held an inquest in presence of P.Ws. 1, 2, 8 and other. He observed marks of injury on the appellant, (namely, 1) on the right forearm of the deceased, 2) under the elbow of the left arm and 3) a dagger wound on the left side of his back. He then sent the body for postmortem examination to Alipurduar Sub-divisional hospital through constable No. 81 - Raghu Singh.

21. The deceased was wearing one white dhuti with bloodstain and a white nylon vest with blood marks. He noted the wearing apparels in the challan which were sent to the hospital with the deadbody. Afterwards, he searched for those clothes in the hospital, but could not collect them. Since the knife (Ext. 1) was covered with dust and since he had examined the witnesses he did not send the weapon for chemical examination. At the Falakata Public Health Centre on 7-3-81 he examined P.Ws. 1 and 2. On 9-3-81 he again went to Harinathpur and examined P.W. 5 and others. On 5-5-81 he again went to Harinathpur and examined P.Ws. 3, 6 and 7. He received the post-mortem report on 21-5-81. On 24-8-81 he was transferred and made over the case diary to the O.C, Falakata P. S.

22. In cross-examination, he denied that the investigation of the case had not been made over to him. There was no note in the seizure list that the knife was found on a piece of cultivated land, but there was a note to that effect in the case diary. He denied that the knife was not covered with blood and dust. At the time when he held the inquest the deceased had been wearing a dhuti and a vest. He requested the post-mortem Surgeon to retain the wearing apparels of the deceased so that he might seize those subsequently. He denied that he intentionally did not seize the wearing apparels of the deceased lest those would dispute the case.

23. P.W. 17 - S.I. B.B. Subba, took over charge of investigation from the O.C, Falakata P.S. on 28-6-82. On 12-7-82 he went to Harinathpur and examined P.Ws. 10, 13 and another witness. On 14-7-82 he again went to Harinathpur and examined P.Ws. 8, Hand 15. He submitted a charge-sheet against the appellant on 13-7-82 under Section 304, I.P.C.

24. In his answer under Section 313, Cr.P.C. the appellant has stated that the witnesses have deposed falsely and that the knife in question was not his and that he did not take that knife. In answer to a question that he was tied up with rope at the place of occurrence and confined thereby P.Ws. 1,2, 3 and 5, he has specifically stated '1 was caught and taken away from my house'.

25. The learned Advocate for the appellant has submitted as follows:

(1) There is no evidence to show that any one saw the appellant coming with any dagger to the meeting.

(2) The prosecution has not alleged or proved any motive for the crime,

(3) A blood trail was expected from the place where the victim was alleged to be first assaulted to the place where he fell down.

(4) No bloodstains were seized from the place where the victim fell down.

(5) The garments of the victim were not seized.

(6) The rope with which the appellant was tied up was not seized.

(7) The piece of bamboo with which the appellant was struck resulting in the knife falling down from his hand was not seized.

(8) The knife (Ext. 1) was not sent for chemical examination.

(9) Only two injuries were found by P.W. 9 who held the post-mortem examination.

(10) In the event of the conviction being upheld, in view of the fact that there is some evidence that the appellant was not a completely normal person the offences should be reduced from one under Section 302, I.P.C. to one under

Section 304, I.P.C.

26. The learned Advocate for the State has submitted that there are four eyewitnesses, viz., P.Ws. 1, 2, 3 and 5, in this case who corroborated each other on material particulars and there is no reason why they should be disbelieved. Because of the reliable evidence of those eye-witnesses the non-seizure of various items could only lead to lack of corroboration and nothing else. Further, the accused was caught red handed and no suggestion was given to any witness that the appellant was arrested from his own house. It was for the first time in one of his answers in his examination under Section 313, Cr. P. C. that he stated that he was taken away 'from his house.

27. In this case, there was no delay in lodging the F.I.R. The evidence of P.W. 1 who lodged the F. I.R. is fully corroborated in almost every detail by the F.I.R. No contradictions or omissions at all have been brought out from the same. The evidence of P.Ws. 2,3 and 4 being the other eye-witnesses fully corroborated the evidence of P.W. 1 as well as each other on every material point relating to the incident. There can be no doubt that this appellant after the incident was caught there and then and tied up. No reason at all has been alleged for false implication of the appellant nor has any animus been suggested as existed between any of the witnesses on the one hand and the appellant on the other. It is true that the prosecution has not either alleged or proved any motive for the crime, but it is settled law that no motive need either be alleged nor proved in any criminal case whether based on direct or circumstantial evidence or a combination of both.

28. P.W. 9 found two injuries, one on the back and the other on the left elbow of the victim. P.Ws. 1, 2, 3 and 5 have all spoken of the victim being first struck on his arm before he began to run and thereafter, on the back after chase and again on his hand after Dinesh fell down being stabbed on the back. P.W. 16 has clearly stated that at the lime of inquest he observed marks of injury on the deceased, such as (1) on his right forearm, (2) under the elbow of his left arm and (3) a dagger wound on the left side of his back. This part of evidence of P.W. 16 has not been challenged at all in cross-examination. The injury on the right forearm of the deceased does not seem to have been noticed by P.W. 9. It may have been a

minor injury and moreover, such a detail might have been omitted by P.W. 9 considering the fact that he was not a Surgeon, but a Gyanocologist.

29. It has been held by the Supreme Court in the case, reported in 1987 Cal Cri LR 25: 1987 Cri LJ 330 Balbinder Singh and Dalbir Singh v. State of Punjab, that the denial of the fact of arrest at the place as alleged in the evidence, if the evidence is ultimately believed, would be an incriminating circumstance giving rise to an inference of guilt, coupled with other circumstances. Moreover, in this case, P.Ws. 8 and 12 have fully corroborated the evidence of P.Ws. 1, 2, 3 and 5 that they found the victim lying unconscious by the side of the jackfruit tree in an injured condition while they found the appellant there with his hands tied up and they found the knife smeared with blood and earth lying on a cultivated land.

30. Although suggestions were made during the trial regarding the unsoundness of mind of the appellant, as noted by the learned trial Judge in his judgment, the learned Advocate for the accused did not make any submission on that point and gave up that point altogether, at the trial. Further, in the appeal before us this point has also not really been canvassed. P.Ws. 1, 2, 3 and 5 have all denied the suggestion that the appellant was of unsound mind. No such suggestion was made to any other witness. The evidence further shows that the appellant at the material time was an active Railway employee. In his answers in his examination under Section 313, Cr.P.C. the accused also has not made any reference to his being of unsound mind at any point of time. There is no evidence at all in this case that the appellant was of unsound mind at the point of time when the offence was committed so as to bring the case within the ambit of Section 84, I.P.C, which has to be always read with Section 105 of the Evidence Act. Section 105 of the Evidence Act lays down that the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code is upon the accused and the Court shall presume the absence of such circumstances.

31. We are able to rely on the evidence of the eye-witnesses, discussed above, and have no hesitation in holding that the guilt of the appellant has been proved beyond all reasonable doubt under Section 302, I.P.C. The way in which the victim

was first struck with a knife and thereafter, was chased and stabbed twice more, particularly once on the back, leave no doubt that the intention of the appellant was to kill the victim. The nature of the weapon used (a knife of about 10/12' long) and the place where the injury was inflicted, namely, on the back below the ribs, cutting the spleen, speak volumes regarding the intention of the assailant. The fact that the spleen was cut indicates that the blow was inflicted with considerable force.

32. In the result, we affirm the judgment of the learned Trial Court and uphold the conviction under Section 302, I.P.C. and the sentences imposed on him by the Trial Court. This appeal is dismissed.

33. Let the records be sent down.

A.C. Sengupta, J.

34. I agree.

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