

Bijoy Singh Vs. the State

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Court : Kolkata

Decided On : Jul-24-1985

Reported in : 1986CriLJ2016

Judge : N.G. Chaudhuri and ;G.C. Chatterjee, JJ.

Appellant : Bijoy Singh

Respondent : The State

Judgement :

G.C. Chatterjee, J

1. Convicted of an offence under Section 302 1.P.C. and sentenced to life imprisonment by the Judge, 13th Court of the City Sessions at Calcutta in Sessions Trial No. 1 of Jan., 1978, Bijoy Singh, the convicted appellant has come up in appeal before us.,

2. The prosecution case was briefly as follows.

3. On the night of 2-1-76 at about 9-30 p.m. Joy Kisen Rathi and Kamal Daga (P. W. 5) were preparing to play Badminton on the roof of Premises No. 24, Broja Dulal Street, Calcutta being accompanied by some other local boys. While the boys were trying to affix the net, the convict-appellant Bijoy Singh appeared on the scene abruptly with a knife as also a goopti. When Joy Kisen and Kamal Daga were about to start the game Bijoy Singh dismantled the net and broke down the

bulb. Then followed a wordy altercation amongst them. Hearing the row one Suresh Singh and his wife Rajkumari Singh came out from their room situate on the self-same roof where the occurrence took place. Suresh Singh was carrying a Bhujali in his hand. As soon as Suresh Singh entered into the scene, Joy Kisen was stabbed by Bijoy Singh with the help of his knife. As a result thereof, Joy Kisen fell flat on the roof with profuse bleeding injuries in his body. Joy raised an alarm attracted by which several residents of the premises assembled at the spot. Amongst these persons P. W. 35 Paban Kishan Sharma was one. In the meantime Kamal Daga caught hold of the hands of Suresh Singh. When Bijoy Singh rushed towards Kamal Daga, Gopal Das Sharma came to the spot. Gopal had come there to help the injured Joy Kisen. Thereafter both Bijoy Singh and Suresh Singh together assaulted Gopal Das Sharma so much so that he too like Joy Kisen fell flat on the self-same roof with bleeding injury on his person. Very soon thereafter, the two injured persons were removed to local Marwari Relief Society Hospital by two different vehicles and from there they were taken to Medical College, Calcutta where they were admitted as indoor patients. Joy Kisen died as a result of the injuries inflicted upon him a few days thereafter that is to say on 7-1-76 whereas Gopal Das Sharma died subsequently on 25-1-1976. In the meantime one Brij Ratan, P. W. 21, a resident of the self-same premises rang up Lalbazar Police Headquarters and on receiving the information, S. I. Shri Nag, P. W. 38 rushed to the spot at about 10 p.m. of the same night where the statement given by one of eye-witnesses Kamal Kumar Jain, P. W. 3, was recorded. That statement was treated subsequently as the First Information Report. The two victims were not assaulted by Bijoy Singh alone but that in the matter of assault two other persons were also there namely, Suresh Singh and his wife Raj Kumari Singh. All the three persons, namely, Suresh Singh, Raj Kumari Singh and Bijoy Singh were tried jointly by the Sessions Judge. They were all charged under Section 302 read with 34 1.P.C. for having caused murder of two persons namely, Joy Kisen and GopalDas Sharma. Before the Sessions Court, 40 P. Ws. were examined and the evidence led was broadly of two varieties namely evidence of eye-witness and evidence of dying declaration made by the victims. P. Ws. 3 to 7 and P. W. 35 are stated to be eye-witnesses. All these eye-witnesses, it may be recalled were residents of the self-same premises namely, premises No. 24, Broja

Dulal Street, Calcutta. The learned Sessions Judge, it appears, disbelieved all the eye-witnesses excepting P. W. 35. Relying upon the evidence of this witness alone, the conviction and sentence were passed by him as already indicated before. Mr. Ray Chowdhury, learned Advocate appearing for the accused/appellant Bijoy Singh contends that the learned Sessions Judge ought not to have relied upon the testimony of this witness inasmuch as the witness does not appear to be a reliable person at all. Mr. Mukherjee, the learned Advocate appearing for the State contends that the learned Sessions Judge was perfectly justified in believing and in acting upon the testimony of P. W. 35. According to him, however, the learned Sessions Judge ought not to have disbelieved the other eyewitnesses of the case. We do not consider it necessary, to enter into the merits of this case in the line as indicated by the learned advocates aforesaid. For we have our difficulties in the matter.

4. While describing the facts of the case we have already disclosed that the trouble was all over a Badminton play which was scheduled to be held on the roof of premises No. 24, Broja Dulal Street, Calcutta. As the players were local boys of the area, it struck our mind that the age of the appellant Bijoy Singh might have been less than 18 years at the time of occurrence. We were then told by Mr. Ray Chowdhury appearing for the accused/appellant that the accused Bijoy Singh had given out his age to be 18 years at the time of his examination under Section 313, Cr. P.C. on 2-2-78. Obviously, therefore, he (Bijoy) was less than 18 years old on the date of occurrence. Mr. Mukherjee appearing for the State of West Bengal concedes that there is no other material on record to indicate that the age of the appellant was something different. It has been held by a Full Bench of this Court that the relevant date of determination of age of a child offender under the West Bengal Childrens Act, 1959 is the date of commission of offence (vide Dilip Saha v. State of West Bengal) reported in 1978 Cal HN 737 : 1979 Cri LJ 88. Now, the date of occurrence as we have seen was on 2-1-76. That being so, the age of Bijoy Singh was roughly 16 years on the date of occurrence. West Bengal Children Act, 1959 defines a 'child' as a person 'who has' not attained the age of 18 years' (vide Section 2, Clause d) of the West Bengal Children Act. There is no doubt thus that on the date of occurrence Bijoy Singh was a child within the meaning of the expression as used in the Children's Act. Now, Section 5 of the said act enjoins

that Juvenile Court alone has exclusive jurisdiction to try a Juvenile offender. In all fairness of the matter, therefore, Bijoy Singh ought to have been tried by a Juvenile Court and not by the City Sessions Court, Calcutta. The City Sessions Court erred also in the matter of trying Bijoy Singh jointly along with two other accused. Now Section 28 of the Children's Act is quite emphatic on the point that a Juvenile offender cannot be tried jointly along with adults. It is undisputed that Bijoy Singh was tried jointly along with Suresh Kumar Singh and Raj Kumari Singh. Suresh and Raj Kumari were both adults.

5. We have made it clear before that we do not intend to go into the merits of the case. We do not want to decide as to whether the Sessions Court was right in believing P. W. 35 and in disbelieving the rest. We are remitting the case to the Committing Magistrate in view of Section 5 of the West Bengal Children's Act, 1959 conferring exclusive jurisdiction on the Juvenile Court in respect of Juvenile delinquents and in this view of the matter we think that we are strongly backed by the decision of the Supreme Court in the case of Gopinath Ghosh v. State of West Bengal, reported in : 1984 CriLJ168 . The Committing Magistrate will ensure that the case is tried by a Juvenile Court or by a Judge who is competent even as a Juvenile Court after proper determination of the age of the offender. The Juvenile Court trying the offender will bear in mind provision of Sections 40 and 41 of the Children's Act for the purpose of determination of age and also Section 24 for the purpose of imposition of sentence if any.

6. In the result, the appeal succeeds. The judgment of conviction and sentence in respect of the appellant Bijoy Singh before us is set aside and the case is remitted back to the Committing Magistrate for disposal in accordance with the discretion we have given above.

7. The appellant who is on bail granted at the time of admission of the present appeal will continue on the same bail till his appearance before the Committing Magistrate who will grant fresh bail on such conditions as he considers proper in the line of the decision in the case Gopinath Ghosh v. State of West Bengal, reported in : 1984 CriLJ168 .

8. The lower Court records may be sent down to the Court below as expeditiously as possible.

N.G. Chaudhuri, J.

9. I agree.

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