

Meghnath De Vs. the State

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Court : Kolkata

Decided On : Jan-08-1999

Reported in : 1999CriLJ2252

Judge : Basudev Panigrahi and ;D.P. Kundu, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Section 307

Appeal No. : Criminal Appeal No. 15 of 1994

Appellant : Meghnath De

Respondent : The State

Advocate for Def. : Biplab Mitra, Adv.

Advocate for Pet/Ap. : Balai Chandra Roy, ;Y.J. Dastoor, ;Abhijit Chakraborty and ;Prabir Mazumder, Advs.

Disposition : Appeal allowed

Judgement :

Basudev Panigrahi, J.

1. This appeal has been filed against the judgment passed by the learned Additional Sessions Judge, Bankura in S.T. No. 5 (1)92 dated 24th Nov. 1993 whereby the appellant was convicted under Section 307, IPC and sentenced to

undergo rigorous imprisonment for a period of seven years and to pay fine of Rs. 2,000/- in default to suffer further rigorous imprisonment for a period of six months.

2. The prosecution case briefly stated is as follows :

The victim PW 5 Shila De was given in marriage with the appellant Meghnath De of Bhairabdangaon 11th Ashar, 1397 B.S. After the marriage she joined her husband in the Matrimonial House at Bhairabadanga village on 3rd Kartik, 1397 B.S. corresponding to 21st Oct. 1990 according to English Calendar. When she was watching closely a television programme at about 7.50 p.m. the victim Shila went out of the house and after a while returned to the courtyard of the house of P.W. 1 Tulshi Charan Bhuin who is the father of the victim in naked condition and fell down in the courtyard suddenly. PW 1, who is the informant in this case had seen several injuries on the face of his daughter PW 5 and also on different portions of her body. Shila had bleeding injuries on her mouth. It was noticed further that teeth of her upper gum were uprooted on account of severe assault on her face. Therefore, PW 1 immediately shifted Shila to Sonamukhi Police Station and from there, under the advice of the police, the victim was shifted to Sonamukhi Hospital and subsequently to B.S.M.C. Hospital through one Swapan Bhuin. P.W. 1 Tulshi Bhuin submitted a written information at Sonamukhi Police Station which was treated as F.I.R. Tulshi Bhuin subsequently came to know about the incident from one Sunil Bhuin who narrated to have seen the victim and her husband, namely, the appellant together. Ranjit Bhuin also told to have been them together sitting by the side of a well which was situated near the house on the date of the incident. Shila, the daughter of Tulshi after admission in the Medical College Hospital reported to Tulshi Bhuin that her husband caused those injuries by striking her with a knife . The Sonamukhi Police Station after treating the written complaint as F.I.R. proceeded with the investigation of the case and after such investigation was closed, placed the charge sheet against the appellant.

3. The learned Additional Sessions Judge, Bankura after careful consideration of the evidence of the prosecution was, however, inclined to record an order of conviction and sentence the appellant to undergo rigorous imprisonment of a

period of seven years and to pay fine of Rupees 2000/- in default to suffer further rigorous imprisonment for a period of six months. Therefore, being aggrieved by such conviction and sentence the appellant filed this appeal.

4. Mr. Roy, the learned senior advocate appearing for the appellant has invited our attention to several inherent infirmities and improbabilities. He strongly urged that although the injury was alleged to have been inflicted by the appellant on the person of the victim on 21st Oct. 1990 but till 6th of Nov. 1990 there was no disclosure either by the victim or by her father or by any other witness. Only the name of the appellant was disclosed on 6-11-1990 and thereafter he was arrested on 8th Nov. 1990 although the Investigating Officer in his evidence, in clear and unambiguous term deposed to have gone to the Medical College Hospital twice and recorded her statement. It is not understood why the Investigating Officer, who is PW 11 did not record the incident on 21st Oct. 1990 although her statement was recorded on that day.

5. It has also been contended by the appellant that the prosecution has cooked up a case falsely to implicate the appellant without any material. P.W. 5 Shila De in her evidence stated that her husband persuaded to terminate an early pregnancy because she had not then attained sufficient age. She further stated to have agreed to the proposal of her husband. It has been deposed that on the Jamdwitya day the appellant came to her village and at the time she was standing near her house. Then, they went towards the well of their village. After reaching at the well, her husband persuaded to undress herself. Thereafter she was given some medicine. After she was stripped herself of her clothes, her husband with help of a root touched her body. After a while her husband standing at the back assaulted her by a big knife, as a result of which she received severe injuries over her neck, cheek and also on knee. In such helpless bleeding state she ran towards her house and fell down on the courtyard. It has been-deposed that her husband had some extra marital relation with another lady.

6. Mr. Roy, the learned senior advocate appearing for the appellant has invited our attention that the victim has woven a 'cock and bullstory' only with a view to falsely implicate the appellant. It has been submitted that no husband with the sense of

honour will ever ask his wife to take off her clothes on the public road near a well to the sight of the others.. It was further contended by the appellant that the well is situated by the side of a village road which has been used by the villagers for making ingress and egress to the village. It is, therefore, impossible that any sensible person would ask his own wife to disrobe her clothes for administering some roots at the sight of the others. So far the motive, what has been ascribed by PW 5, has been proved to be false in view of the evidence of the Investigating Officer, PW 11. PW 11 made a categorical statement that Shila, the.PW.5, did not state before him that her husband had any love with a girl of Bhairabdanga. Therefore, in such view of the case, it cannot for a moment be believed that there was any motive of the husband for causing such severe bleeding injuries.

7. The appellant has also placed another circumstance which might belie the prosecution case. That the evidence of PW 5 Shila, disclosed that immediately after the injury she ran to her house and fell down on the courtyard. From the statement of PW 1 it does not disclose that she was senseless. She was immediately carried to the police station and thereafter to the hospital. Till she was examined for the second time she had not disclosed the name of her assailant. Had she known that the appellant was the author of the crime, she could not have faltered to utter his name immediately to her father or at the police station. Such non-disclosure of the name of the appellant goes a long way in proving his innocence. It has been stated that the appellant came on 'Jamdwitya' day around 7-15 p.m. In that event how had at that time the victim, PW 5 gone to the village road so that both of them met each other and thereafter the appellant persuaded her to accompany him to the well. This also improbabilised the prosecution story. PW. 1, the father of the victim in his evidence narrated that his daughter lost her teeth of the upper gum which were found to have been uprooted due to assault. PW 5, the victim herself did not support the version of her father that due to such assault she lost her teeth, nor the medical report disclosed that there was any loss of teeth.

8. The medical officer who had examined the injured PW 5, has not stated in the report the length, size and depth of the injury. The nature of the injuries have been peculiarly not described in the injury report. In the absence of such description it is

very difficult to determine as to the nature of injury said to have been sustained by PW-5 . In the report it is further indicated that the patient was conscious at the time she was brought to the hospital. It has been disclosed by the Medical Officer while noting down the history of the injury that the victim complained before that some unknown persons inflicted such injuries. In that view of the fact it raises serious doubt as to who was the author of such heinous crime.

9. Under Section 307, IPC what the Court is to see is whether the act irrespective of its result was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredients being established, there can be offence of 'attempt to murder' . Under Section 307, IPC the intention precedes the act attributed to the accused. Therefore, the intention is to be gathered from all the circumstances and not merely from the consequence that ensues. The prosecution has utterly failed to place any material from which the intention or knowledge could be gathered that the appellant has done the act with the intention to commit the murder. Rather, the medical report suggests that the injuries are not so grievous in nature from which it could be said that there was intention and knowledge of the appellant to commit such murder.

10. Mr. Roy, the learned senior advocate has submitted that in the instant case the size and depth of the injury having not been noted in the injury report, it can otherwise be said that those injuries were only skin deep and, therefore, from this it cannot be inferred that there was any intention to cause murder.

11. The prosecution relied upon the evidence of PW 8 Sunil Bhui. It has been contended that he had seen the appellant and PW 5 Shila going together towards the well near the house of Tulshi. From the Investigating Officer's report it does not disclose as to when the statement of PW 8 was taken. Further he claimed to have seen the appellant and the victim going together while he was returning home after witnessing a football match. According to him the police had arrived in the same night during 9 to 9.30. It is very strange way he did not disclose before the police in the same night that he had seen them together. Even assuming his statement to have seen both the appellant and PW 5 Shila, going together is true, from this no

reasonable conclusion could be drawn that the appellant Meghnath committed such act.

12. P.W. 1 in Court claimed that he heard from PW 8 that the latter saw the appellant and PW 5 between 7-10 to 7-15 going together, which has been denied by the Investigating Officer. If PW 1 was informed that both of them were seen together, it is not understood why such important fact had not been mentioned in the F.I.R.

13. It is really amazing to note why the Investigating Officer did not examine immediately after the occurrence and even when she was examined on 25-10-1990 what made her not to speak the name of the appellant, if actually he was the culprit.

14. From the aforesaid discussion it has been emerged that PW 1 and PW 5 were not sure as to who was the culprit in this case at least till 6th of Nov. 1990. Therefore, only on 6th Nov. 1990 the name of the appellant was for the first time disclosed and thereafter he had been arrested. In the aforesaid situation, therefore, a serious doubt has been created regarding the involvement of the accused.

15. From the totality of the facts and circumstances of the case and from the discussions made above, we are, however unable to agree with the observations of the learned Additional Sessions Judge by holding the appellant guilty under Section 307, IPC. Therefore, we hereby allow the appeal and set aside the conviction and sentence passed against the appellant. Accordingly, the appellant be set at liberty forthwith.

D.P. Kundu, J.

16. I agree.