PRABIR MONDAL AND ANR. A

v.

STATE OF WEST BENGAL

(Criminal Appeal No. 1974 of 2009)

OCTOBER 28, 2009 B

[ALTAMAS KABIR, CYRIAC JOSEPH AND ASOK KUMAR GANGULY, JJ.]

Penal Code, 1860: ss.307/34 – Conviction under – Accused allegedly attacked complainant with a knife and tried C *to cut his throat – Deposition of complainant that he tried to save himself and in the process sustained injuries on palm – Conviction under ss.307/34 by courts below – On appeal, held: Injury report showed that complainant did not have incised injury on palm but only a bruise which could be* D *caused with a blunt instrument – Knife and mat with blood stains not sent for forensic examination – Delay in lodging FIR – Chances of fabrication not ruled out – Prosecution case improbable, thus conviction set aside.*

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Prosecution case was that while complainant was sleeping in a pump room, appellant No.1 pressed his mouth with his hand and one MD held two ends of a knife to cut the throat of the complainant. The complainant deposed that he caught hold of the middle portion of the knife with both hands and on account of this he sustained cut injuries on the palm of his left hand. He also sustained injuries on his cheeks. The trial Court convicted the appellants and MD under ss.307/34 IPC. High Court affirmed the same. Hence the present appeal.

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Allowing the appeal, the Court

HELD: The case made out by the prosecution appears to be improbable and the conviction of the

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A appellants was not in conformity with the evidence adduced on behalf of the prosecution. The manner in which the alleged incident took place does not fit in with the injuries received by the complainant. The most glaring inconsistency is the story of the complainant's having B held the blade of the knife, alleged to be used in the commission of the offence, with both hands and thereby suffering incised injuries on his left palm. The injury report showed that the complainant did not have any incised injury or any other injury on his left palm and the injury C to his right palm was not of an incised nature, but a bruise which could have been caused by a blunt instrument. Moreover, the knife, which was seized and was alleged to have been used for the commission of the offence, was never sent for forensic examination so as to connect it with the offence. Furthermore, the other D sharp-cutting implements, which were also seized, were also not sent for such examination. Even the mat which had blood stains on it was not sent for such examination and it could, therefore, not be proved as to whether the blood stains thereon were of human or animal origin. E Coupled with that was the fact that on going to the hospital in the night for medical treatment, the complainant did not even disclose to the doctor as to how he had sustained the injuries. The doctor was, therefore, not at all aware of any such incident. There was F delay in lodging the FIR after consultation with the local villagers. Therefore, chances of fabrication in the FIR cannot be ruled out. Neither the Trial Court, nor the High Court, appeared to have looked into these details properly. The judgment of conviction and sentence G imposed by the Trial Court and upheld by the High Court are set aside. [Paras 17, 19 and 20] [502-F-H; 503-A-F]

Rajeevan v. State of Kerala 2003 3 SCC 355, referred to.

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Case Law Reference:

2003 3 SCC 355 referred to Para 13

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1974 of 2009.

From the Judgment & Order dated 30.6.2008 of the High Court of judicature at Calcutta in C.R.A.No. 343 of 1987.

Pradip Ghosh, Pijush K. Roy, Mithilesh Kumar Singh for the Appellants.

Satish Vig for the Respondent.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

2. The appellants herein and one Mongal Das were tried for an offence punishable under Section 307/34 Indian Penal Code in Sessions Trial No.2 of March 1987 arising out of a First Information Report lodged with Berhampore Police Station in the District of Murshidabad, West Bengal. The learned Sessions Judge convicted the three accused under Section 307/34 I.P.C. and sentenced each of them to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/-, and, in default, to suffer rigorous imprisonment for one more year.

3. Aggrieved by the judgment of conviction and sentence passed by the learned Sessions Judge, the appellants, along with Mongal Das, filed an appeal before the High Court, being C.R.A.No.343/87. By its judgment dated 30th June, 2008, the High Court dismissed the appeal and confirmed the judgment of the learned Sessions Judge. Although, there were no eye-witnesses to the incident and the conviction was based on circumstantial evidence, the High Court was of the view that the circumstantial evidence, and in particular, the evidence of the victim would conclusively show that the accused were involved

A in the incident. Even the fact that the victim had not informed the doctor, who was examined as "P.W.7", as to how the incident had happened, was not given much importance by the High Court.

B 4. Appearing for the appellants, Mr. Pradip Ghosh, learned Senior Advocate submitted that while disposing of the appeal, the Hon'ble Judges of the High Court did not deal with the evidence adduced on behalf of the prosecution and disposed of the appeal on a general reference to the same. Mr. Ghosh submitted that the evidence adduced on behalf of the C prosecution, including the evidence of P.W.1, the victim, would clearly establish the absurdity of the prosecution case. Mr. Ghosh urged that even the evidence of the doctor (P.W.7) had not been considered by the High Court, although, the same had a significant bearing on the veracity of the prosecution case.

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5. Mr. Ghosh urged that although the incident is said to have occurred at about 11.00 p.m. in the night of 6th September, 1982, the same was reported to the Berhampore Police Station only at 9.45 a.m. on 7th September, 1982, after the lapse of E about 11 hours. From the First Information Report, Mr. Ghosh also pointed out that although the complaint was lodged on 7th September, 1982 at 9.45 a.m., the same was dispatched to the learned Magistrate the next day at 8.00 a.m., after an interval of one day. According to Mr. Ghosh, such delay spoke volumes F of the manner in which the prosecution had built up its story, which in itself belied the prosecution case.

6. Turning to the evidence of P.W.1, Kashem Sk., the victim, Mr. Ghosh pointed out that according to the said witness he had gone to the Berhampore General Hospital for treatment G immediately after the incident between 1.00 and 1.30 a.m. on 7th September, 1982. From the hospital, instead of going to the police station for lodging the First Information Report, he claimed to have gone home and went to the police station for the said purpose at 8.00 a.m., which gave him sufficient time H to involve and implicate the appellants and Mongal Das in the

incident on account of previous enmity.

7. Mr. Ghosh also pointed out from the evidence of P.W.1 that the incident as narrated was hard to believe since it was the case of the victim that while he was sleeping in the pump room in question, the Appellant No.1 pressed his mouth with his hand while Mongal Das held two ends of the knife to cut the throat of the victim. In cross-examination, P.W.1 also deposed that he had caught hold of the middle portion of the knife with both hands and that on account of the same he had sustained cut injuries on the palm of his left hand. Mr. Ghosh submitted that the said story was not consistent with the injury report which was prepared by P.W.7 on 7th September, 1982. According to the said report, P.W.7 had examined Kashem Sk. at 1.45 a.m. in the Berhampore General Hospital where he was posted as Medical Officer. According to him, there was one incised wound on the left side of cheek 2½" x 1/6" skin deep starting from the left half of the upper lip. He also found one minor abrasion over the right palm ½" x 1/6" and was of the view that the first injury may have been caused by a sharp edged weapon while the latter injury over the right palm might have been caused by a blunt object. Mr. Ghosh submitted that there was no mention whatsoever of any incised injury either on the left palm, as was claimed by the victim in his evidence, or in the right palm, which not only disproved the evidence of the victim but gave rise to serious doubts as to whether the incident had at all occurred in the manner suggested by the prosecution. According to Mr. Ghosh, in the opinion of P.W.7 even the injury on the left cheek of the victim could have been caused by a sharp pointed bamboo strip.

8. Mr. Ghosh then referred to the evidence of P.W.1, the alleged victim, where he has said that Krishna was holding the handle of the knife and Mongal took the other end and both of them touched his throat in order to kill him and that *in order to* prevent them from doing so, he resisted and as a result, the knife touched his left cheek causing injuries on his left cheek,

A as indicated hereinabove. Mr. Ghosh also referred to the cross-examination of P.W.1, wherein he had mentioned that he had caught hold of the knife with the palm of his left hand and had sustained cut injury, which was contrary to the injury report which shows that P.W.1 had not received any cut injury on his left hand
B and the injury that had been caused on his right palm was by a blunt instrument. Our attention was also drawn to the story made out by P.W.1 that after going to the hospital and narrating the incident to the neighbours, he had left for home and in the early morning at about 4.00 a.m. along with P.W.2, P.W.3, P.W.5,
C P.W.6 and one Maniruddin, he had gone to the Berhampore Police Station and after giving the statement he also deposited **a knife** with the police station. Mr. Ghosh drew our attention to the last portion of the cross-examination of P.W.1, wherein he stated that he had taken the knife which had been used to try
D and murder him to the hospital also. From the hospital, P.W.1 stated that he went home with the said knife, and, thereafter, in consultation with the neighbours and relations, he again went to the police station with the said knife and deposited the same at the police station at 9.45 a.m.

E 9. For the purpose of proving the falsity of the prosecution case, Mr. Ghosh also referred to the deposition of P.W.2, Yeasin Sk., who was a seizure witness and claimed that the Investigating Officer had seized **one sword** and after preparation of the seizure list, he had signed the same.

F 10. Reference was also made to the deposition of P.W.3, Shanti Bibi, the sister-in-law of the victim Kashem Sk., whose evidence was merely hear-say evidence and besides stating that she found three persons fleeing away to the southern side,
G she also stated that she did not find anybody assaulting Kashem Sk. at the relevant time.

11. Mr. Ghosh then referred to the evidence of Dr. Swapan Baral (P.W.7) to indicate contradictions in the evidence of Kashem Sk. in relation to the injuries alleged to have been

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inflicted on him by the appellants. A

12. Mr. Ghosh lastly referred to the evidence of P.W.8, Biswanath Sarkar, who conducted the investigation. According to him, he visited the shallow pump room and seized one blood stained *pati* (a small mat made of date palm leaves), one old pillow and one *hanshua* with broken handle having some cracks. In answer to a query by the Court, the said witness also submitted that one big knife was seized from the complainant Kashem Sk. at the police station. The said witness also admitted that none of the seized items were sent to the forensic laboratory for examination and it was not possible to say whether the said mat had been stained with human or animal blood. He also admitted that he could not procure the original injury report signed by Dr. Swapan Baral. B C

13. Mr. Ghosh urged that there was no explanation for the delay in lodging the FIR and that according to the evidence of P.W.1, he had gone home and consulted the neighbours and relations and had, thereafter, lodged the FIR, giving rise to serious doubts about the genuineness of the complaint. Mr. Ghosh referred to a decision of this Court in *Rajeevan vs. State of Kerala* [(2003) 3 SCC 355], where such a delay was held to cause sufficient doubt about the genuineness of the FIR. D E

14. Learned counsel lastly submitted that it was extremely surprising that when visiting the doctor for treatment, P.W.1 did not even mention about the incident to the doctor or as to how he had received the injuries on his person. Mr. Ghosh urged that from the state of the evidence, it was not possible to find the appellants guilty of the offence under Section 307 read with Section 34 IPC and sustain the sentence imposed on the appellants on account thereof. F G

15. Mr. Satish Vig, learned Advocate, who appeared for the State, submitted that the prosecution had successfully proved its case and there was no reason to disbelieve the evidence of P.W.1, the victim, who had sustained injuries during H

A the attempt made by the appellants to kill him. He submitted that the very fact that the victim had sustained injuries on his left cheek was sufficient to indicate that the incident had, in fact, taken place. Even as far as identification is concerned, Mr. Vig submitted that it was a moonlit night and it was not, therefore, B difficult for P.W.3, Shanti Bibi, to identify the three people, she saw running away from the scene of the occurrence. He also submitted that it is quite possible, after a traumatic experience, for a victim to make a few mistakes while making his statement, but as observed by the Division Bench of the Calcutta High C Court, such omission, including the question as to whether he had told the doctor about the incident or not, would not warrant acquittal of the appellants when the incident was proved through other witnesses. Mr. Vig also submitted that the delay of 12 hours in lodging the FIR could not be said to be fatal to D the prosecution case, since the victim had to first attend the hospital to treat his injuries, and, thereafter, on returning home and resting for a while, he along with several others left for the police station where the FIR was lodged.

16. Mr. Vig submitted that no case had been made out on E behalf of the appellants for interference with the judgment and order of the High Court.

17. Having considered the submissions made on behalf of the respective parties and after going through the materials F on record, we are inclined to accept Mr. Ghosh's submissions that the case made out by the prosecution appears to be improbable and the conviction of the appellants was not in conformity with the evidence adduced on behalf of the prosecution.

G 18. The main pillar of the prosecution case is P.W.1, Kashem Sk., the complainant himself.

19. As pointed out by Mr. Ghosh, the manner in which the alleged incident is supposed to have taken place does not fit H in with the injuries received by the complainant. The most

glaring inconsistency is the story of the complainant's having held the blade of the knife, alleged to have been used in the commission of the offence, with both hands and thereby suffering incised injuries on his left palm. The injury report shows that the complainant did not have any incised injury or any other injury on his left palm and the injury to his right palm was not of an incised nature, but a bruise which could have been caused by a blunt instrument. Moreover, the knife, which was seized and was alleged to have been used for the commission of the offence, was never sent for forensic examination so as to connect it with the offence. Furthermore, the other sharp-cutting implements, which were also seized, were also not sent for such examination. Even the mat which had blood stains on it was not sent for such examination and it could, therefore, not be proved as to whether the blood stains thereon were of human or animal origin. Coupled with the above is the fact that on going to the hospital in the night for medical treatment, the complainant did not even disclose to the doctor as to how he had sustained the injuries. The doctor was, therefore, not at all aware of any such incident, as presented by the prosecution, having been committed. Coupled with the above is the fact of the delay in lodging the FIR after consultation with the local villagers. Therefore, chances of fabrication in the FIR cannot be ruled out.

20. Neither the Trial Court, nor the High Court, appears to have looked into these details properly. We, therefore, have no hesitation in setting aside the judgment of conviction and sentence imposed by the Trial Court and upheld by the High Court.

21. The appeal is, accordingly, allowed. The appellants be released forthwith.

D.G. Appeal allowed.