SWAPAN KUMAR SENAPATI

v.

STATE OF WEST BENGAL

(Criminal Appeal No. 2129 of 2009)

FEBRUARY 24, 2011

[HARJIT SINGH BEDI AND CHANDRAMAULI KR. PRASAD, JJ.]

Penal Code, 1860: s.325 – Grievous hurt – Accused assaulted his uncle – No external injury – Death of accused's uncle after three days – FIR lodged u/ss.341 and 325 three days after incident stating that the accused attacked the deceased, sat on his chest and hit him on his head with a stone – Trial court held that prosecution story was not credible and acquitted the accused – High Court, however, convicted the accused u/s.304 Part-II and sentenced him to seven years rigorous imprisonment – On appeal, held: In the facts of the case, conviction u/s.304–II was not justified – Delay in lodging FIR was explained – The injuries caused were apparently not with a stone but rough handling by the accused which led to the internal injury to the brain and then to death – The case fell squarely u/s.325 – Appellant having undergone about two years of the sentence, in the interest of justice, sentence reduced to that already undergone – FIR.

FIR: Delay in lodging – Strained relations between uncle and nephew – Assault by nephew on his uncle leading to internal injury to his brain and then to death after three days – FIR lodged three days after the incident – Held: Delay was not fatal to prosecution case since the dispute was within the family and in family dispute independent witnesses are reluctant to come forward to give evidence – Moreover, since there was no external injury, the FIR was lodged only after the condition of the deceased deteriorated.

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2129 of 2009.

From the Judgment & Order dated 27.01.2009 of the High Court at Calcutta in Govt. Appeal No. 15 of 1999.

B Pradip Ghosh, Rauf Rahim for the Appellant.

Satish Vig for the Respodents.

The following order of the Court was delivered

C **ORDER**

1. We have heard the learned counsel for the parties.

2. On the 22nd July, 1992 at about 11:00a.m. Satkari D Senapati, hereinafter referred to as the deceased, aged about 76 years was assaulted by his nephew Swapan Kumar Senapati, the appellant herein, in the presence of, amongst others, P.W. 3 and P.W. 7, the wife and servant of the deceased. As a consequence of the attack, a First Information Report was registered at the Police Station, on the 25th July, E 1992, under Sections 341 and 325 of the IPC. In the First Information Report, it was stated that the relations between the parties were strained on account of some litigation and that the appellant had attacked the deceased, had sat on his chest, and had hit him on his head with a stone. It appears that the condition F of the deceased deteriorated on the 25th of July, 1992 and though he was taken for treatment to several hospitals, he ultimately died. The dead body was subjected to a post mortem examination and it was noted that there was no external injury on the dead body and that the death had been caused by intra G cranial and extra cerebral haemmorhage in the brain.

3. The trial court on a consideration of the evidence of P.Ws. 3 and 7, (the other eye witnesses having been declared hostile), found that the prosecution story could not be believed. H The trial court, accordingly, acquitted the appellant. The High

Court, has, in appeal, reversed the judgment of the trial court and relying on the evidence of P.Ws. 3 and 7 as also the medical evidence has convicted him under Section 304 (II) of the IPC and sentenced him to seven years rigorous imprisonment. It is in this situation that the matter is before us after the grant of special leave.

4. We have heard Mr. Pradip Ghosh, the learned Senior Counsel for the appellant and Mr. Satish Vig, the learned counsel for the State of West Bengal.

5. Mr. Ghosh has first argued that the statements of P.Ws. 3 and 7 could not be believed as they were interested witnesses and as the incident had happened in the middle of a local street, the prosecution should have produced some independent witnesses from that location. He has further argued that the medical evidence did not support the ocular version and that in any event a case under Section 304 (II) of the IPC was not made out and if at all the conviction ought to have been recorded under Section 325 thereof.

6. Mr. Satish Vig has, however, supported the judgment of the High Court.

7. We have absolutely no reason to doubt the presence of P.Ws. 3 and 7. Although there appears to be some delay in the lodging of the FIR, this can be explained by the fact that the dispute was within the family and, initially, in the absence of any external injury, it did not appear that any serious damage had been caused to the deceased and it was only after his condition had declined rapidly that the First Information Report had been lodged. We also see that in a family dispute independent witnesses are reluctant to come forward to give evidence. We, however, feel that in the facts of the case the conviction under Section 304 (II) was wrong. We have gone through the evidence of P.W. 8 Dr. Bibhuti Baran Senapati who had conducted the autopsy on the dead body. He found a bilateral peri orbital haematoma on the opening of the skull and

A no external injury was present. He also noted that the cause of the death was intra cranial haemmorhage. When cross examined the doctor deposed that if somebody was hit by a stone or hard substance it was likely that there would be some external injury. Likewise, P.W. 9, Dr. Murari Mohan Kumar who
B had examined the deceased on the 24th July, 1992 emphatically stated that there was no external injury on the head and if there had been one it could have been detected by a CT scan. It has also come in the evidence of P.W. 3 that after the appellant had sat on the chest of her husband he had held
C his head and repeatedly hit it against the ground. It appears, therefore, that the injuries caused were apparently not with a stone but it was the concussion and the rough handling by the appellant that had led to the internal injury to the brain which had resulted in haematomal haemmorhage and then to death.
D We are, therefore, of the opinion that the matter would fall squarely under Section 325 of the IPC. We are told that the appellant has undergone about two years of the sentence. We feel that the ends of justice would be met if the sentence is reduced from seven years to that already undergone by him.

E 8. The appeal stands disposed of in the aforesaid terms.

D.G. Appeal disposed of.