

GYANESHWAR SHYAMAL

v.

STATE OF WEST BENGAL

(Criminal Appeal No. 2147 of 2009 etc.)

MARCH 29, 2016

[JAGDISH SINGH KHEHAR AND C. NAGAPPAN, JJ.]

Penal Code, 1860 – ss.148, 364/149, 302/149, 307/149 – Prosecution under – Of 35 accused – Conviction of 7 accused including the appellants-accused u/ss. 148, 324/149 and 364/149 by trial court and remaining accused acquitted of all the charges – Appeal of the convicted accused dismissed by High Court – On appeal by the appellant-accused, held: Prosecution case is supported by the eye-witnesses including an independent injured eye-witness – The appellants-accused all through shared the common object of the assembly – Conviction of the appellants-accused confirmed.

Dismissing the appeals, the Court

HELD: 1. According to Exh. 5 Sketch Map, the occurrence had taken place inside the house of the deceased. It cannot be appreciated that the eye-witnesses were only the family members and their testimonies were interested ones. The occurrence having taken place inside the house, it is only the family members who could witness it. PW4 was an independent witness and he was also injured during the occurrence. His testimony corroborates the testimonies of other eye-witnesses. [Para 9] [424-G-H; 425-A-E]

2. It is true that two of the appellants/A10 and A25 belonged to different villages. Their names are found mentioned with their residential village in the complaint which was lodged at the earliest point in time. PWs 2, 4 and 8 have testified about the participation of both the above accused in the occurrence and have identified them also. Nothing is put in the cross-examination of the prosecution witnesses either denying their presence or absence of any role played by them in the assembly. Not even a suggestion was made in this regard. These accused in their replies made under Section 313 Cr.P.C. have not denied their presence in the

A occurrence. On the other hand their presence in the occurrence place is established by the evidence available on record. [Para 10] [425-B-D]

Akbar Sheikh and Ors. vs. State of West Bengal 2009

(7) SCR 518:(2009) 7 SCC 415 – distinguished.

B 3. The prosecution in a case of the nature as in the present case, was required to establish : i) Whether the appellants were present; and ii) Whether they shared a common object. The appellants undisputedly raided the house of the deceased and they were armed with deadly weapons and they attacked the deceased and PW4 and abducted the deceased in order to murder him. The appellants right from the beginning viz., when they assembled in a house till the abduction of the deceased, shared the common object of the assembly at all stages. Therefore, the impugned judgment of the High Court does not suffer from any infirmity to warrant interference. [Para 12] [425-E-F]

D

Case Law Reference

2009 (7) SCR 518

distinguished.

Para 5

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2147 of 2009.

E

From the Judgment and Order dated 09.02.2009 passed by the Division Bench of the High Court at Calcutta in C.R.A. No. 7 of 1991.

WITH

C.A. No. 2295 of 2009

F

P. K. Ghosh, Sr. Adv., Ankur S. Kulkarni, Shubham Jaiswal, (for M/s. Lex Regis Law Officers), Anurag Pandey (For Mr. Bijan Kumar Ghosh), Joydeep Mazumdar, Rohit Dutta, Parijat Sinha, Advs., for the appearing parties.

The Judgment of the Court was delivered by.

G

C. NAGAPPAN, J. 1. These two appeals are preferred against the judgment dated 9.2.2009 passed by the High Court of Judicature at Calcutta in CRA No.7 of 1991.

2. The appellants in Criminal Appeal No.7 of 1991 are accused Nos.1 to 5, 10 and 25 in Sessions Trial Case No. XIV of March 1987 on the file of 5th Additional Sessions Judge at Midnapore. They along with

H

28 other accused were tried for the alleged offences under Sections 148, 364/149, 302/149 and 307/149 of the Indian Penal Code. The Sessions Court found accused Nos.1 to 5, 10 and 25 guilty of charges under Sections 148, 324/149 and 364/149 and not guilty of the charge under Section 302/149 of the Indian Penal Code. Accused Nos.1 to 5, 10 and 25 were sentenced to undergo rigorous imprisonment for 10 years each with fine of Rs.1,000/- each and in default to undergo further rigorous imprisonment for six months each for the conviction under Section 364/149 IPC; sentenced them to undergo rigorous imprisonment for one year each for the conviction under Section 148 IPC and further sentenced them to undergo rigorous imprisonment for one year each for the conviction under Section 324/149. At the same time the Sessions Court acquitted remaining 28 accused of all the charges.

3. Aggrieved by this conviction and sentence accused Nos.1 to 5, 10 and 25 preferred Criminal Appeal in CRA No.7 of 1991 before the High Court of Judicature at Calcutta. The High Court by its judgment dated 9.2.2009 dismissed the appeal. Accused Nos. 2, 3 and 4 died during the pendency of the appeal. Challenging the impugned judgment accused No.25 Ganeshwar Shyamal preferred Criminal Appeal No.2147 of 2009 and accused No.1 Manik Mondal, No.5 Amar Mondal and No.10 Mihir Patra preferred Criminal Appeal No.2295 of 2009 before this Court. These two appeals are heard together.

4. Briefly the prosecution case is as follows : PW2 Jitobahan is the husband of PW3 Smt. Khiroda. Deceased Satyaban is their elder unmarried son and PW8 Manoranjan Mondal is their younger son. All of them lived together in Karthnala village. PW4 Muralidhar Kuila is friend of deceased Satyaban. On 9.10.1983 between 9 and 10 a.m., the cattle of accused Hariram Mondal caused damage to the Kundri plants grown on the back side of the house of PW2 Jitobahan. Satyaban drew away the cattle and this enraged Manik Mondal, son of Hariram Mondal, who retaliated with the bow and arrow in his hand. Satyaban came inside the house. It was also alleged that there was political rivalry between them. Around noon time on the same day all the accused including the appellants armed with lathis, tangis, bows and arrows assembled in the house of Golak Mondal, situated at a distance of 30 cubits from the house of Satyaban. At about 1.30 p.m. PW4 Muralidhar Kuila came to the house of Satyaban and was talking to him in his house. At that time all the accused with arms in their hands came there and surrounded Satyaban and Muralidhar. Accused No.1 Monik Mondal hit

- A Satyaban with tangi, a sharp cutting weapon and he also attacked PW4 Muralidhar above the right eye with tangi. PW4 Muralidhar fled away. The accused persons assaulted Satyaban and took him to the house of Golak Mondal. Satyaban was thereafter never found either alive or dead. PWs 2 and 3, parents of Satyaban and PW8 Manoranjan, brother witnessed the occurrence. Fearing for life PW8 Manoranjan fled to the house of his brother-in-law at Satma village and narrated the occurrence to PW1 Ardhendu Satpati who rushed to the police station in his motor-cycle which was at a distance of about 44 kilometers. PW1 Ardhendu Satpati lodged Exh.1 written complaint and PW10 Sub-Inspector Mriganka Sekhar Misra received the same and registered Exh.1(a) First Information Report at 6.15 p.m. on the same day. The police had to requisition a vehicle and ultimately reached the place of occurrence at about 5.00 a.m. in the morning on the next day. PW10 Sub-Inspector searched for the accused persons but they were not found. He searched the house of accused Golak Mondal and seized a large number of blood-stained articles by preparing Exh.6 and 6-A Mahazars. He sent PW4 Muralidhar to Gopiballavpur primary health centre, though PW4 was given first aid by Dr. Pushpa Ranjan Ghose. PW9 Dr. Bepari examined PW4 Muralidhar Kuila at the primary health centre and found 1½" x ¼" sharp cut wound over right eye and ½" x ¼" sharp wound below the right eye. The injury report given by him is Exh.3. PW10 Sub-Inspector on completing the investigation filed chargesheet against 35 accused. The Sessions Court on framing of charges conducted the trial in which prosecution examined 10 witnesses and marked documents. No evidence was adduced by the defence. The trial court convicted only seven accused and sentenced them as stated supra. On appeal the High Court confirmed the conviction and sentence. Aggrieved by the same the present appeals have been filed.

5. Mr. P.K. Ghosh, learned senior counsel appearing on behalf of the appellants would urge:

- G a) the prosecution case must be held to have not been proved since the family members are the eye-witnesses;
- b) Whether the occurrence took place inside the house or outside is not established;
- c) two of the appellants belong to different villages and their presence in the occurrence place is doubtful and they have been

H

implicated falsely due to political rivalry and the courts below committed error in passing the judgments; A

d) in any event most of the appellants having not taken any active part, benefit of doubt should be given to them.

The learned senior counsel in support of his submission mainly placed reliance on the decision of this Court in Akbar Sheikh and Ors. vs. State of West Bengal [(2009) 7 SCC 415]. B

6. Mr. Joydeep Mazumdar, learned counsel appearing on behalf of the State, on the other hand, supported the impugned judgment contending that the appellants armed with deadly weapons attacked PW4 Muralidhar Kuila and abducted Satyaban to murder him and thereafter Satyaban was never found alive or dead and each one of the appellants had the requisite common object and the conviction and sentence imposed on them are sustainable. C

7. The prosecution case is that the accused armed with deadly weapons indulged in rioting and abducted Satyaban from his residence and murdered him. The trial court held that Satyaban was murdered in the house of accused Golak Mondal was not proved since his dead body was not found despite vigorous search and it is a case of untraceability of the *corpus delicti* and hence the charge of murder was not proved. The State did not prefer appeal against the acquittal of the accused on the said charge and it became final. At the same time the trial court held that the appellants indulged in rioting by causing injury to PW4 Muralidhar Kuila and abducted Satyaban by assaulting him with intent to commit murder and found the appellants guilty of the charges stated supra. PW2 Jitobahan and his wife PW3 Smt. Khiroda were living with their sons Satyaban and PW8 Manoranjan in their house in Karthnala village. According to PWs 2, 3 and 8 on the occurrence day in the morning cattle of accused Hariram caused damage to the Kundri plants grown on the back side of their house and Satyaban drew away the cattle and enraged by this accused No.1 Monik Mondal retaliated with bow and arrow and Satyaban came inside the house. It is their further testimony that by noon time on the same day all the accused including the appellants assembled in the house of Golak Mondal which was situated near their house and at that time they were armed with lathis, tangis, bow and arrows. PWs 2, 3 and 8 have testified further that PW4 Muralidhar Kuila came at about 1.30 p.m. to their house to D
E
F
G
H

A meet Satyaban and both of them were talking in their house and at that
time all the accused with arms in their hands came to their house and
surrounded Satyaban and PW4 Muralidhar Kuila. Accused No.1 Monik
Mondal hit Satyaban with tangi and he also attacked PW4 Muralidhar
B Kuila above right eye with tangi and all the accused assaulted Satyaban
and took him to the house of accused Golak Mondal and Satyaban was
never found thereafter alive or dead. PW4 Muralidhar Kuila has also
testified that when he was indulged in conversation with Satyaban in
their house they were surrounded by all the accused and he was attacked
by accused No.1 Monik Mondal with tangi resulting in injury in his right
eye and he fled for life and Satyaban was abducted by them. PW9 Dr.
C Bepari examined PW4 Muralidhar Kuila and found two sharp cut wounds
over and below his right eye. Exh.3 is the injury report issued by him.
PW8 Manoranjan fled to the house of his brother-in-law at Satma village
and narrated the occurrence to PW1 Ardhendu Satpati who lodged the
written complaint in the police station.

D 8. The occurrence had taken place at about 2.00 p.m. on 9.10.1983
and the complaint had been lodged at about 6.15 p.m. on the same day,
on which the case came to be registered. As mentioned in the FIR, the
police station was situated at a distance of 54 kms. from the occurrence
place. In such circumstances there is no delay in lodging the complaint
and it assumes significance. Seven accused persons have been named
E with their residential village in the complaint and it includes the appellants
herein. The complainant PW1 Ardhendu Satpati has not witnessed the
occurrence and on the instruction given by PW8 Manoranjan he had
lodged the complaint.

F 9. PW4 Muralidhar Kuila in his testimony has stated that he saw
Satyaban and his brother Manoranjan in front of the house and he started
talking to Satyaban and at that time the accused persons surrounded and
attacked them. PWs 2, 3 and 8 have categorically stated that PW4
Muralidhar Kuila on the occurrence day at about 1.30 p.m. came to
their house to meet Satyaban and both of them were talking inside the
G house at which point of time the accused barged in. The Investigation
Officer PW10 in Exh.5 Sketch Map prepared by him has shown the
occurrence place inside the house of Satyaban. We also perused the
sketch map and are convinced that the occurrence had taken place only
inside the house of Satyaban. In the same way we are unable to
appreciate the other contention that the eye-witnesses are only the family
H members and their testimonies are interested ones. The occurrence

having taken place inside the house it is only the family members who could witness it. PW4 Muralidhar Kuila is an independent witness and he was also injured during the occurrence. His testimony corroborates the testimonies of other eye-witnesses. A

10. It is true that two of the appellants/A10 and A25 belong to different villages. As already stated their names are found mentioned with their residential village in the complaint which was lodged at the earliest point in time. PWs 2, 4 and 8 have testified about the participation of both the above accused in the occurrence and have identified them also. Nothing is put in the cross-examination of the prosecution witnesses either denying their presence or absence of any role played by them in the assembly. Not even a suggestion is made in this regard. It is also relevant to point out that these accused in their replies made under Section 313 Cr.P.C. have not denied their presence in the occurrence. On the other hand their presence in the occurrence place is established by the evidence available on record. B C

11. In the facts of the decision cited supra 29 accused had faced trial and the testimony of two eye-witnesses were found to be credible and those witnesses had not named some of the accused in their testimonies and in the absence of any clinching evidence against those accused they were acquitted by this Court. D

12. The prosecution in a case of this nature was required to establish : i) Whether the appellants were present; and ii) Whether they shared a common object. The appellants undisputedly raided the house of Satyaban and they were armed with deadly weapons and they attacked Satyaban and PW4 Muralidhar Kuila and abducted Satyaban in order to murder him. The appellants right from the beginning viz., when they assembled in the house of Golak Mondal till the abduction of Satyaben, shared the common object of the assembly at all stages. We are of the view that the impugned judgment of the High Court does not suffer from any infirmity to warrant interference. E F

13. There are no merit in the appeals and the same are dismissed. G

Kalpana K. Tripathy

Appeals dismissed.