

Calcutta High Court

HON'BLE JUDGE(S): CHITTA RANJAN DASH, PARTHA SARATHI
SEN , JJ

ABDUL SHEIKH V. STATE OF WEST BENGAL

C.R.A. No. - 333 of 1992, decided on 08/12/2022

Penal Code (45 of 1860) , S.302, S.147, S.148, S.149— Unlawful assembly and murder - Appreciation of evidence - Allegations that accused persons armed with deadly weapon formed unlawful assembly and committed violence upon deceased and his family member, resulting into death of deceased - Prosecution witnesses deposed that accused persons formed unlawful assembly and assaulted deceased with deadly weapon - Strain relation existed between deceased and accused persons - Medical evidence established death caused due to ante-mortem injuries and homicidal in nature - Ocular evidence corroborated with medical evidence - Conviction proper.

(Para 12, 16)

Case Referred :

Chronological Paras

AIROnline 2010 SC 461

Para No.(18)

AIR 2009 SC 958 : 2009 AIR SCW 25

Para No.(17)

Name of Advocates

Partha Sarathi Bhattacharyya, Ms. Swarnali Saha for Petitioner; Prasun Kumar Dutta, Md. Kutubuddin, Santanu Deb Roy for Respondent.

1. **PARTHA SARATHI SEN, J. :-**The instant appeal arises out of ST No. III of August, 1992 (arising out of Sessions Case No. 11 of December,1991) were by and where under the learned trial court convicted the present appellants under Sections 147/148/302 read with Section 149 of the Indian Penal Code and thus sentenced them to suffer rigorous imprisonment for the periods as mentioned in the said impugned judgement and also for fine. The appellants felt aggrieved and thus preferred the instant revisional application.

2. For effective disposal of the instant appeal the facts leading to initiation of the aforesaid sessions trial is required to be discussed in a nut shell.

3. On 23.07.1985 one Dhananjoy Mondal of Beniakandi, P.S Karimpur came to P.S Karimpur in District Nadia and gave Ezahar that on the previous night at about 10:30 p.m, he, his three sisters, two brothers and his parents were sleeping in their home. He stated further that at about 12:30 a.m 20/25 persons entered into their house with arms like 'daw', 'hansua', stick and torch light and started

calling his father and at that time they were using abusive languages. It is his further version that in the light of the said torch he could identify one Abdul Sk., Son of Ruhul Sk. @ Bhadu and Abu Samed, son of Lt. Saber Sk. of his village. He stated further that Abu Samed started assaulting his father with 'hansua' and his mother made an attempt to protect his father. It is his further version that when he and his mother and sisters raised hue and cry, they were threatened by the said miscreants. After sometime the said miscreants left the P.O along with their two buffaloes leaving their father in injured condition. At the time of their departure the said miscreants hurled bombs. He stated further that sometimes thereafter the co-villagers came to their house and thereafter his father was shifted to Karimpur Hospital by his relatives Prasanta Biswas and Jiten Mondal and some of his co-villagers namely Fakir Sk. and Pocha Sk. It is his further version that on the way to hospital his father succumbed to his injuries.

4. In his Ezahar it has been stated further by the informant that in the year 1983 Abdul Sk. falsely implicated his father in a murder case for which his father had to remain in custody for a considerable length of time. On account of this a discord existed between the family members of the said Abdul Sk. and the family members of the said informant.

5. On the basis of such complaint Karimpur P.S Case No. 15 dated 23.07.1985 was started. Investigation was taken up and after completion of the said investigation charge sheet was submitted against five accused persons including the present appellants. Trial Court Record reveals that subsequently the case was committed to the Court of Sessions who by his order dated 12.03.1992 transferred the said case to the learned trial court for trial and disposal. Lower Court Record reveals further that on 09.07.1992, learned trial court considered the entire materials as placed before him and thereafter framed charges under Sections 147/148/302 read with 149 of the Indian Penal Code against the four accused persons namely, Abdul Sk., Abu Samed, Mannan Sk. @ Mono and Haksuddin Sk. Since the aforementioned four persons pleaded their innocence, the trial proceeded.

6. Before the learned trial court the prosecution in order to bring home the charges has examined 11 witnesses in all and some documents have been exhibited on behalf of the prosecution.

7. For effective disposal of the instant appeal we shall discuss the oral evidence of those prosecution witnesses which are relevant.

8. PW1 being the informant in course of his examination-in-chief stated that seven years back in the month of 'sravan' at about 12 a.m his father was murdered. It is further version that on the relevant day and hour he (PW1) and his father were sleeping on the same 'verandah' which is situated on the east of their dwelling house and at that time about 25 people entered into their house and they started using filthy languages to their father. It is his further version that he noticed that Abdul and Abu Samed were assaulting his father with a 'hansua'. He further stated that he could recognize the said two accused persons in the torch light which was being focussed by the miscreants. He stated that the torch light reflected on the wall and on such reflection he could recognize the miscreants. He stated also that thereafter the miscreants left P.O with their two buffaloes. He further stated that thereafter they arranged for the cart with the help of village people and took his father to Karimpur Hospital. He further stated that his father was an accused in a murder case of the brother-in-law of the accused Daud. He further stated whether the present two appellants are residents of his village. He further stated that after returning from P.S he came to learn from his mother that she could recognize two other accused persons namely Manann and Manik.

9. In course of his cross examination he stated that accused Abdul Sk. got his father arrested to police in a murder case falsely and since then they had an ill feeling against the accused Abdul Sk. According to the prosecution PW2 being the wife of the victim is another ocular witness of the incident. In course of her examination-in-chief she also stated that seven years back on 6 Sravan her husband was murdered. She stated further that on the relevant night and hour at about 12 o'clock in the midnight about 20/25 persons entered into their house, they caught hold of her husband who was sleeping then and started assaulting him by using abusive languages. She stated further that the accused Abu Samed gave a blow of 'hansua' on the person of her husband below his right arm pit. She stated also that another accused Abdul assaulted on the leg of her husband. She tried to restrain the said two assailants but they asked her to keep mum. She also stated that the flash of the torch light of the miscreants illuminated the place and accordingly she could identify five miscreants. She stated also that at that time hurricane lamp was also burning. She further stated that thereafter the miscreants left the P.O with a pair of buffaloes of her. She was also cross examined by the defence extensively. In course of her cross examination she

denied the suggestions as given to her from the side of the defence.

10. PW 3 is the daughter of the deceased and PW2. In her examination-in-chief she stated that on the relevant night she was sleeping inside the room while her parents were sleeping in the 'verandah' attached to the said room. She stated that she woke up since her brothers and sisters were crying then, while her father was groaning and at that time some persons were abusing him. She stated that after hearing of such noise she came out from her room and at that time she was assaulted on her left shoulder. She also stated that at that time her father was already injured and her mother was trying to guard her father from the assailants. She stated that she could not recognize the assailant by name but in court she identified Abdul Samed Sk., Haksuddin Sk. as assailants.

11. PW11 is the autopsy surgeon who conducted the post mortem over the victim. In his examination-in-chief he stated that he noticed the following injuries:-

"1. The large gaping wound in right axilla and pectoral region measuring 7" X 2".

2. Lacerated injury over down chest in front. Lacerated injuries were there in on dissection there was blood in pleural cavity and right lung was ruptured. Stomach contained half digested rice.

" According to him the death of the victim occurred due to shock and haemorrhage and as a result of injuries which are ante-mortem and homicidal in nature.

13. PW10 is the Recording Officer as well as the first Investigating Officer who in his examination-in-chief stated that on 23.07.1985 at about 6:45 a.m he was discharging his duty as a Duty Officer at Karimpur P.S and at that time PW1 (Dhananjay Mondal) made a verbal complaint to him which was reduced into writing by him and on the basis of the same he drew up the formal FIR and stated Karimpur P.S Case No. 15 dated 23.07.1985. He himself took charge of the investigation and went to Karimpur Rural Hospital along with the de facto complainant. He made inquest over the dead body of the victim, visited P.O, prepared sketch map collected blood stained earth and the sample earth under the cover of his seizure list, examined the complainant and the other witnesses and recorded their statements under Section 161 CrPC, made a raid in the house of the accused persons and could arrest some of the accused persons and produced them in court.

14. PW9 is the second Investigating Officer. In course of his examination-in-chief he stated that after taking charge of investigation Karimpur P.S Case No.15 dated 23.07.1985 he arrested one Nabi Mallick. He also examined Joydev Mondal, Fakir Sk. and Pacha Sk. and thereafter recorded their statements under Section 161 of the Indian Penal Code. He stated that after completion of investigation he submitted charge sheet in this case.

15. In considered view of us the evidence of PW4, PW5, PW6, PW7 and PW8 are not much relevant since they are post occurrence witnesses and from their evidence nothing could be elicited which may be helpful either for the prosecution or for the defence.

16. On conjoint perusal of the evidence of PW1 and PW2 it appears to us that PW1 being the son of the victim and PW2 being the wife of the victim had adduced sufficient inspiring evidences towards the guilt of the present appellants. It appears to us that the First Information Report in the instant case has been recorded within few hours of the incident which in the circumstances of the case cannot be considered as unreasonably delayed. It further appears to us that version given in the F.I.R is substantially the same as one spoken to by the PW1 and PW2 before the Court. There had not been any acceptable suggestions why PW1 and PW2 should adduce false evidence against the appellants. It is most unlikely that these two witnesses would allow the real culprits to escape and unnecessarily implicate some other innocent persons on the happening of such a tragedy in their family. Admittedly from the evidence of PW1 and PW2 it reveals that there existed an animosity and/or strain relation between the family members of PW1 and PW2 and the present appellant No.1 Abdul Sk. over the arrest of the victim on account of murder of a close relative of the present appellant No.1 but nothing could be elicited in the course of cross-examination of PW1 and PW2 that on account of such family rivalry they have unnecessarily implicated the present appellant and allowed the real culprits to remain outside the screen. On perusal of the evidence of PW1 and PW2 it appears to this Court that their consistent evidence also gets due corroboration from the evidence as adduced by the autopsy surgeon i.e. PW11.

17. On a number of occasions the reliability of the evidence of the eye witnesses have come up for consideration of the Hon'ble Supreme Court as well as of different High Courts and it has been consistently held that even if the eye

witnesses are related to the deceased, his evidence has to be accepted if found to be reliable and believable because he would honestly be interested in ensuring that the real culprits are punished .

The same view was taken in the reported decision of Indra Pal Singh v. State of U.P reported in (2008) 16 SCC 648 : (**AIR 2009 SC 958**).

18. At this juncture this Court also proposes to see as to how far as the prosecution in the case in hand before the learned trial court is successful to prove the charges of Sections 147,148 and 149 of the Indian Penal Code. On perusal of the evidence of the prosecution witnesses more specifically the evidence of PW1 and PW2 it appears to us that it was their clinching evidence that on the fateful night at about 12 a.m at least 25 persons including the present appellants formed an unlawful assembly and in prosecution of their common objective committed violence upon the victim and his family members with deadly weapon like 'hansua' and thus caused death of the victim who is the father of PW1 and husband of PW2. In a reported decision Daya Kishan v. State of Haryana reported in (2010) 2 CrCLR (SC) 365 : (AIR Online 2010 SC 461) the Hon'ble Supreme Court while dealing with a case under Section 149 of the Indian Penal Code expressed the following view:-

"There are two essential ingredients of Section 149 viz. (i) commission of offence by any member of an unlawful assembly and (ii) such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed. Once the court finds that these two ingredients are fulfilled, every person, who at the time of committing that offence was a member of that assembly has to be held guilty of that offence."

19. On perusal of the evidence as adduced by the prosecution witnesses before the learned trial court it appears to us that all the essential ingredients of Sections 147, 148 and 149 of the Indian Penal Code have been proved as against the present appellants and thus this Court holds that the learned trial court is very much justified in holding the present appellants guilty of the offence as mentioned above.

20. In view of such, the instant appeal fails. The impugned judgement and order dated 27.11.1992, as passed by Learned Additional Sessions Judge, Nadia in S.T. No.III of August 1992 arising out of Sessions Case No.11/December 1991 is hereby

affirmed.

21. The bail bonds of the present appellants namely Abdul Sheikh and Abu Samed @ Abu Samad stand hereby cancelled.

22. Since the present appellants i.e. Abdul Sheikh son of Ruhul Sk. and Abu Samed @ Abu Samad son of Lt Saber Sk. both of Beniakandi, P.S Karimpur, District Nadia are on bail by the order of this Court they are directed to surrender before the learned trial court within a month from the date of passing of this order to suffer the remaining part of their sentence failing which the learned trial court shall issue non-bailable warrant of arrest against them.

23. Let a copy of this judgement along with LCR be sent down at once.

24. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

Appeal Dismissed