

Serial No.04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.28/2022 with
Crl.M.C.No.66/2022

Date of Order: 03.05.2023

Aklas Uddin Choudhury Vs. State of Meghalaya

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. N.I. Choudhury, Adv with
Md. I.A. Mansuri, Adv

For the Respondent : Mr. B. Bhattacharjee, AAG with
Mr. S. Sengupta, Addl.PP
Ms. R. Colney, GA

- i) Whether approved for reporting in Law journals etc.: Yes
- ii) Whether approved for publication in press: No
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JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The only ground urged on behalf of the appellant in this case is that there was no witness to the incident and it was only the unilateral statement of the victim on which the appellant has been convicted.

2. The incident was of January 11, 2014. The complaint was filed with the Jowai Police Station on January 18, 2014 by a brother of a victim. Such brother claimed that he had been informed by the victim brother that it was the appellant who had grievously injured the victim in

an incident that took place near a petrol pump at NH 44 around the 8th mile close to Lad Rymbai. As to the delay in lodging the first information report, the de facto complainant indicated that since the victim was struggling for his life and continued to be in a precarious condition, the de facto complainant had not found it convenient to lodge the complaint earlier and the complaint was lodged immediately upon the victim first taking some food after suffering the life-threatening injuries.

3. A statement of the victim was recorded under Section 164 of the Code of Criminal Procedure, 1973 by a Judicial Magistrate. In course of such statement, which was substantially corroborated by the victim's deposition at the trial, the victim indicated the relevant truck number wherein he suffered his injuries. The number of the vehicle matched with the registration number disclosed by the de facto complainant in the FIR.

4. According to the victim his truck was loaded with coal in the morning of January 11, 2014 but the driver made some excuse to leave the truck and returned much later. It was in the late afternoon that the driver returned and after proceeding to drive the truck some distance, the driver warned the victim that there was checking of vehicles going on at the nearby check-post and the truck ought to wait before proceeding any further. It is obvious that the truck in this case was ferrying illegally mined coal as Lad Rymbai is famous for such illegal cottage industry in

the State despite orders of the National Green Tribunal and the Supreme Court prohibiting any form of coal mining otherwise than in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957.

5. The victim went on to say that since the driver and the helper did not return for quite some time, the victim finished his dinner and after returning to the truck found that the helper and driver had arrived. It was then the turn of the driver and helper to go for dinner and the victim claimed that since it was cold he pulled a blanket over himself and fell asleep inside the truck. According to the victim, he was awoken upon the two doors of the driver's cabin of the truck being suddenly opened and two persons each standing on either side of the truck. The victim claimed that he could not recognise the three other persons, but clearly recognised the appellant herein who had climbed on to the truck and had threatened to assault and, thereafter, assaulted the victim. The victim claimed that he kicked at the other persons and held them at bay but he could not avoid the vicious jabs of the kukri that the appellant herein brandished and felt that his intestines had come out. In course of the tussle, the victim fell out of the truck and, even while holding his stomach to stop the intestines from coming out, ran away, according to him, to a distance of

approximately 200 metre with one or more of the assailants in hot pursuit and striking him on the back with sharp weapons that he could not see.

6. The victim went on to describe that he found a tin door of a nearby building which he kicked to create noise to alert people, if they were around, and he wrote out a phone number with his blood for anyone to inform his nearest relatives. The victim claimed that he passed out but had a faint recollection of being ferried in an auto-rickshaw to a hospital. He then described that he was ultimately taken to the North Eastern Indira Gandhi Regional Institute of Health and Medical Sciences in Shillong where, after a prolonged period, he recovered and was discharged.

7. The auto-rickshaw driver who had driven the victim to the Jowai hospital was examined as PW 1 at the trial. He clearly stated that he did not witness the incident and was awoken by a helper who worked at the nearby petrol pump who informed him that a person had been injured and had to be taken to the hospital.

8. The relevant attendant at the petrol pump deposed as PW 2 and corroborated what PW-1 said. There may have been a third person who accompanied PW-1 and PW-2 along with the victim to the Jowai hospital.

9. The third witness to be examined by the prosecution at the trial was the FIR-maker. He substantially repeated what he had indicated in the FIR and added that for a short while while the patient was being

transferred from Jowai hospital to Neigrihms in the early morning of January 12, 2014, the oxygen mask fastened on the patient was taken off and the victim brother named the appellant herein as the only assailant that he recognised. It must be noted, in such context, that the defence declined to cross-examine the FIR-maker at the trial.

10. The victim took the witness box as PW-4, followed by the investigating officer. A medical practitioner, pursuing his post graduate studies and then posted at Neigrihms was examined as PW-6 and confirmed the multiple stab injuries suffered by the victim.

11. In course of the detailed discussion of the matter by the trial court, the trial court found that the investigation was completely unsatisfactory and no effective measures were taken by the investigating officer to ascertain the veracity of the incident or to obtain the weapon or weapons that may have been used or even to try and apprehend the associates of the appellant or the other alleged assailants that the victim had somewhat described in course of his statement given to the investigating agency and the one recorded before a Judicial Magistrate. In particular, the trial court came to the conclusion that the investigation conducted was extremely poor and observed as such at paragraph 76 of the impugned judgment dated March 17, 2022. At paragraph 74 of the judgment, the trial court lamented that not only was no weapon seized,

but there may not have even been any meaningful attempt in such regard. At paragraph 73 of the judgment, the trial court observed that there was no endeavour by the investigating officer to even establish the presence of the appellant at the place of occurrence. Elsewhere in the judgment, the trial court noticed that no attempt was made to seize the relevant vehicle or to obtain any blood-stained material therefrom or even collect the earth from the blood-stained place of occurrence.

12. The appellant was arrested some two months or so after the incident and the investigating officer indicated that the appellant was apprehended on the basis of the appellant's calls from his mobile number being traced. It also appears that it took time for the investigating officer to obtain the mobile number of the appellant herein.

13. According to the appellant, it was unwise of the trial court to merely rely on the uncorroborated statement of the victim to convict the appellant. The appellant asserts that since it is the admitted position that there was no witness to the incident, some corroborative material, whether it be any offending weapon or any blood-stained clothes or any other like material, should have been presented by the prosecution for the appellant herein to be linked to the incident that obviously took place on the night of January 11, 2014. The appellant complains that despite the trial court noticing the complete lack of endeavour or enterprise in the investigation

and the failure to discover any offending weapon or present any other material evidence pertaining to the incident, it was observed that merely because the offending weapon could not be found or there may not have been any witness to the incident, it would not result in the case built by the prosecution against the appellant altogether failing.

14. There are several features which stand out and which the trial court, quite appropriately, found to be clinching against the appellant. First, the defence made no attempt to attribute or allege any motive to the victim for the victim naming the appellant herein as the principal assailant. Indeed, in course of the victim's testimony and his statement recorded under Section 164 of the Code, the victim indicated that he was familiar with the appellant herein as both operated in Lad Rymbai and the appellant had apparently previously demanded extortion money from the victim in Lad Rymbai which the victim had declined.

15. Apropos the victim's assertion of previous enmity with the appellant herein, the appellant relies on a judgment rendered by the Judicial Magistrate, First Class, in Silchar on November 13, 2019 when allegations of assault for failing to yield to a monetary demand was levelled against the appellant herein by the victim and the FIR-maker brother of the victim. However, it does not appear that such judgment had been placed before the trial court. The appellant submits that this was a

relevant fact that ought to have been brought to the notice of the trial court and merely because Advocate representing the appellant had failed to do so, should not be counted against the appellant as the relevant judgment would demonstrate a motive on the part of the victim to name the appellant herein and would take a lot of sheen off the victim's allegation against the appellant.

16. Even if it is accepted that the Silchar judgment ought to have been placed before the trial court and such judgment is now taken into consideration in the present case, it cannot be lost sight of that motive is a question of fact and such fact was not even asserted by the appellant herein before the trial court. Even if some credible suggestions had been put by the appellant herein to either the victim or the FIR-maker in course of the trial to suggest that such persons had some ulterior motive to falsely implicate the appellant, the benefit of the doubt may have been extended to the appellant if the appellant had been honourably acquitted by the Silchar court.

17. However, apart from the fact that no attempt was made by the appellant to attribute to any motive on the part of the victim or the FIR-maker, it is also evident that the Silchar case fell through because one or more of the witnesses turned hostile and the prosecution could not prove the case against the appellant herein beyond reasonable doubt. As is now

judicially acknowledged, there is a distinction between an honourable acquittal of an accused and the acquittal of an accused because of the prosecution failing to discharge the high burden of proving the commission of the offence beyond reasonable doubt. Indeed, contrary to what the appellant suggests, the Silchar judgment demonstrates that the appellant herein may have been given to indulging in extortion and also corroborates the victim's statement that the appellant had previously demanded money from the victim in Lad Rymbai which the victim had refused to part with.

18. More importantly, upon the defence failing to cross-examine the FIR-maker despite the FIR-maker's assertion that his victim brother had named the appellant herein as the principal assailant, the defence virtually accepted the FIR-maker's version of things. In addition, upon the appellant being examined by the trial court under Section 313 of the Code upon testimonies of the witnesses being summarised and put to the appellant, the appellant made two important statements. First, the appellant claimed that he was not in Lad Rymbai or in Assam on the day of the occurrence. Secondly, the appellant asserted in response to a later question that the appellant only returned to Lad Rymbai on January 13, 2014.

19. It is elementary that it is not necessary for an accused to make any positive assertion in course of his examination under Section 313 of the Code. However, when an accused makes a positive assertion in course of such examination and which seeks to detract from the case made out by the prosecution, it is incumbent on the accused to prove such assertion. The mere assertion without attempting to prove the same would be held against the accused rather than permit the accused to prick a hole in the prosecution case.

20. In support of the appellant's case, three judgments have been placed: (1976) 1 SCC 442 (*Badri v. State of Rajasthan*); AIR 2003 SC 854 (*Lallu Manjhi v. State of Jharkhand*); and, (2013) 12 SCC 529 (*Karan Singh v. State of Haryana*).

21. All three cases involved murder charges against the appellants before the Supreme Court. In the first case of *Badri*, the conviction was based on the evidence of a solitary witness. The court found that such witness had indicated that when gunshots were first fired he was frightened and ran away from the place of occurrence. In such circumstances, the Supreme Court disbelieved such witness' further statement to the effect that he had seen the appellant shoot the victim. Surely, if the witness claimed that he had run away at the first hearing of gunshots, it was difficult to believe such witness when he said that a later

gunshot by a particular person struck a particular victim. The facts in the present case and the circumstances that led to the trial court to give credence to the victim's accusation in this case are clearly distinguishable.

22. In *Lallu Manjhi*, PW-9, Mannu, was the only witness. The Supreme Court found that the initial statement made by such witness under Section 161 of the Code was embellished by him to a great extent in course of the trial. Indeed, the Supreme Court found that the relevant witness modulated his version of things to suit the subsequent opinion rendered by a medical practitioner. It was in such circumstances that the conviction of the appellant based on the rather doubtful evidence of the sole witness was annulled. In the third case of *Karan Singh*, the appellant's conviction was, indeed, upheld by the Supreme Court. The court found that the investigation in such case was tardy and it had been observed as such by the trial court. However, the Supreme Court held that merely because the investigation was shoddy would not lead to the accused being let off if there was credible material against the accused available in the evidence. The principle enunciated by the Supreme Court in this case does not further the cause of the present appellant; and, on the contrary, lends support to the finding rendered by the trial court.

23. For the reasons aforesaid and since the trial court found enough material before it, particularly the eminently credible statement of the

victim, to hold that the appellant was involved in grievously hurting the victim, the impugned judgment and consequent sentence do no warrant any interference. There is no doubt that the injuries inflicted by the appellant were so serious so as to almost bring his intestines out. The life-threatening condition of the victim was recognised by the Jowai hospital by immediately referring the victim to the super-speciality unit in Neigrihms in Shillong. The FIR-maker's evidence is clear that the victim spent more than 15 days in the intensive care unit at Neigrihms. Indeed, even in the FIR, the de facto complainant indicated that the victim's condition was so serious that the complainant could not leave Shillong earlier to make the trip to Jowai to lodge complaint before January 18, 2014.

24. The nature of the injuries were such that they may have resulted in the death of the victim; but, as providence would have, there were good Samaritans in the petrol pump attendant and the auto-rickshaw driver who ferried him to the Jowai hospital from where he was sent to Neigrihms and recovered after a protracted period.

25. Upon the FIR being made, the case was initially registered under Sections 386, 326 and 307 of the Penal Code, 1860 read with Section 34 thereof. When the charge-sheet was filed, since only a solitary accused was arraigned, Section 34 of the Penal Code was dropped. As to

the grievous hurt by dangerous weapon suffered by the victim, there can be no doubt. The evidence before the trial court sufficiently indicated that the victim came back from the brink. Thus, the charges under Sections 326 and 307 of the Penal Code were established. As to the case under Section 386 of the Penal Code, since there was no allegation by the victim of any extortion having been committed, the appellant herein was acquitted of such charge. There does not appear to be any infirmity in either the judgment or the sentence impugned herein.

26. In the light of the apt conviction of the appellant herein and the nature of the injuries inflicted by the appellant on the victim, an appropriate sentence has been awarded and it requires no correction.

27. CrI.A.No.28 of 2022 is dismissed by upholding the judgment and sentence passed by the trial court on March 17, 2022.

28. CrI.M.C.No.66 of 2022 is disposed of.

29. Let an authenticated copy of this judgment and order be immediately made available to the appellant free of cost.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
03.05.2023
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