

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

C.R.A. 275 of 1986

Sm. Sova Rani Misra

Vs

The State of West Bengal

As *Amicus Curiae* : Ms. Puja Goswami

Last Heard on : 27.04.2022.

Delivered on : 13.05.2022.

Moushumi Bhattacharya, J.

1. The appeal arises out of a judgment passed by the Sub-Divisional Judicial Magistrate, Suri, Birbhum under Sections 147/380/427 and 323 of the Indian Penal Code (IPC), 1860 in C. Case No. 318 of 1980. By the said judgment, the accused persons were acquitted under Section 248(1) of The Code of Criminal Procedure, 1973, and discharged from their bail bonds.

2. The appellant before this Court was the *de facto* complainant and deposed as the PW/1 before the learned Trial Court. The incident occurred on 20th May, 1980 and the complaint was filed by the appellant under Sections 147/379/323/504 of the IPC. The charges were framed under

Sections 147/380/427 of the IPC (punishment for rioting, theft in dwelling house, mischief causing damage).

3. The case made out by the prosecution was that the grandfather of the complainant/appellant had executed a deed of gift in favour of the appellant before his death in respect of a tin-shed house together with some landed property. On 20th May, 1980, the respondents, armed with deadly weapons attacked the appellant, trespassed inside the tin shed house and tried to steal articles. The appellant was assaulted when she raised an alarm after which the respondents dislocated the tin-shed from the roof of the house. The appellant suffered a consequential loss of Rs. 3000/-. C. Case No. 318/1980 on 24.05.1980 was registered against the respondents on the basis of the complaint made by the appellant. Upon trial, the respondents were acquitted of all the charges.

4. During the trial, the prosecution examined a total of 8 witnesses while no witnesses were examined by the defence. The witnesses of the prosecution were as follows.

PW/1 Sova Rani Misra	– Defacto complainant/appellant
PW/2 Sukumar Mishra	– Cousin brother of the appellant
PW/3 Radhu Soren	– Co-villager of the appellant
PW/4 Gopinath Kaibarta	– Post occurrence witness, heard the incident from the appellant

PW/5 Ananda Gopal Roy	– Co-villager of appellant, witness to the gift deed executed in favour of appellant
PW/6 Ramgopal Ghosh	– Co-villager of the appellant
PW/7 Anil Kr. Mondal	– In his presence the tin shed was recovered by police
PW/8 Baidyanath Chattopadhyay	– One of the members of village salish that took place between the appellant and the respondents

5. After going through the materials on record including the depositions of the witnesses, this Court is of the view that there are several reasons for believing the case made out by the prosecution. First, the incident took place on 20.05.1980 and the appellant lodged a General Diary on the very next day in the local police station. The complaint case was filed before the learned Chief Judicial Magistrate, Suri, Birbhum. Hence, there was no delay in lodging of the complaint. Second, PW/2, Sukumar Mishra, who was examined by the prosecution, corroborated the version of the complainant. Sukumar Mishra was one of the eye-witnesses to the incident and a cousin brother of the appellant. The deposition of Sukumar Mishra (PW/2) shows that the PW/2 witnessed the part of the incident and also identified all the accused persons. PW/3, Radhu Soren was also an eye-witness to the incident and deposed that PW/3 was aware of the deed of the gift of the house to the appellant by her grandfather. The deposition of PW/3 shows that PW/3 came to the place of occurrence upon hearing the cry of the complainant and witnessed the part of the incident. At the time of incident,

PW/3 did not protest out of fear but identified all the accused. Third, the deposition of PW/5 Ananda Gopal Roy clearly states that there was a civil dispute between the appellant and the respondents regarding the property in question. PW/5 is a co-villager of the complainant and the accused persons and deposed that PW/5 was a witness to the deed of gift of the tin shed house to the appellant by the grandfather of the appellant. The deposition of PW/8, Baidyanath Chattopadhyay, further corroborated the account of PW/5 as it was deposed that PW/8 was invited for a settlement of a dispute between the appellant and the accused persons over the removal of tin sheds from the house of the appellant. PW/8 also deposed that a salish was called in the village for settlement of the dispute and further that the appellant showed a deed of gift from her grandfather to PW/8.

6. The impugned judgment reflects that the learned Trial Judge disbelieved the account of PW/2 being an eye-witness to the incident. The reason of disbelieving the account of PW/2 is that PW/2 is the cousin brother of the appellant and is vitally interested in the case of the appellant/complainant. The learned Judge also disbelieved the account of PW/3, the other eye-witness of the incident, on the ground that PW/3 is the bargadar of the complainant for a long time and was also vitally interested in the cause of the complainant.

7. The reasons given by the learned Judge make the impugned judgment vulnerable to challenge. The learned Judge had raised a question as to what prevented the appellant/complainant to examine independent witnesses,

being the other villagers who saw the incident. The learned Judge comes to a conclusion that there was an enmity between the parties of the case for a long time and hence it was incumbent on the complainant to produce independent witnesses. The learned Court also comes to a finding that the police did not start any case over the complaint and finds it unbelievable that the police could remain idle after receiving a complaint of this nature. This finding is factually incorrect since the materials on record do not disclose any delay on the part of the police to take prompt action on the complaint. Further, the conclusion that there is room for doubt with regard to the genuineness of the case made out by the complainant based on the above reasons is not substantiated from the records or the reasons given in the impugned judgment. This particularly shows from the deposition taken after occurrence of the incident corroborated one and another. The version of the eye-witnesses also corroborates the versions of the complainant/appellant. In *Union of India vs Dafadar Kartar Singh; (2020) 2 SCC 437*, the Supreme Court was of the view that judgments of acquittal may be reversed or otherwise interfered with when the court has substantial and compelling reasons like when the trial court has ignored the evidence or material documents or misread the material evidence. The absence of reasons for disbelieving the case made out by the prosecution in the impugned judgment and the lack of credible grounds for accepting the case of the defence amounts to an instance where the judgment in *Dafadar Kartar Singh* would apply in full force.

8. This Court is hence of the view that the appeal should be allowed for the above reasons and the impugned judgment dated 19th March, 1986 passed by the Sub-divisional Judicial Magistrate, Suri, Birbhum, should be set aside.

9. Since the incident occurred and the Case was registered against the accused persons in May, 1980 and the impugned judgment is of 19th March, 1986, this Court is of the view that convicting the accused persons under the charges framed against them after a gap of 36 years would disturb the balance of convenience and result in more injustice being caused in the matter. It is not even clear whether the accused persons are still alive or available after 36 years. This information can only be provided by the local police station. The records also show that the accused persons were never represented in the present appeal. None of the parties were represented before this Court during the hearing of the matter by reason of which the Court had to appoint an *Amicus Curiae*. It would hence be inequitable to convict the accused persons and sentence them after 36 years particularly when the accused persons were not heard or represented in the appeal.

10. CRA 275 of 1986 is accordingly disposed of by directing the Sub-Divisional Judicial Magistrate, Suri, Birbhum to reconsider and decide the case in terms of the observations made by this Court and after obtaining the report from the local police station as to the availability and whereabouts of the accused persons. The learned Court is requested to dispose of the

matter as expeditiously as is possible and subject to the convenience of the Court.

11. This Court records its appreciation to the learned Amicus for the assistance given to the Court.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfilment of requisite formalities.

(Moushumi Bhattacharya, J.)