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C.R.R.1129 of 2005

In Re: An application under Section 401 read with Section 482 of the
Code of Criminal Procedure;

Narayan Singha
Versus
State of West Bengal and others

Mr. Tapan Datta Gupta,
Mr. Pinaki Dhole,
Mr. Parvej Anam,
Mr. Debjit Bhattacharyya.
...for the petitioner.

Mr. Arijit Ganguly,
Mr. Sandip Chakraborty.
...for the State.

Mr. Tapan Dutta Gupta, learned advocate appearing for the petitioner submits that in the present case the learned sessions court ignored the vital evidence and erroneously arrived at its finding of acquittal. According to the learned advocate, the learned trial court relied upon four issues to arrive at its finding. First, the delayed FIR, Secondly, none of the witnesses during the inquest being conducted divulged of any assailants, thirdly, the First Information Report do not contain the name of the assailants, lastly, the learned Judge observed that there were contradictions amongst witnesses particularly P.W. 3, 4 and 5.

Mr. Sandip Chakraborty, learned advocate appearing for the State draws the attention of the Court to the evidence of the witnesses as also the two Investigating Officers being P.W.11 and P.W.12.

On the contrary, Mr. Datta Gupta, learned advocate appearing for the petitioner drew the attention of the Court to the evidence of P.W.2, P.W.3, P.W.4 and P.W.5. The main thrust of Mr. Datta Gupta in respect of the factual assertions are that the evidence in this case as deposed by the eyewitnesses clearly state regarding two factors; one by using of crow bar these two accused persons Radhe Shyam Bhagat and Pratap Bhagat tried to break the door and Pratap Bhagat inflicted blow on the head of the victim Prabhu Saha which resulted his death. This factum was stated consistently by P.Ws. 2, 3, 4 and 5 in their examination-in-chief before the court.

The submissions of Mr. Datta Gupta, learned advocate appearing for the petitioner in respect of the issues relating to 'delayed FIR' and 'FIR do not name the assailants' have substantial force, in the background of the facts of the present case. Learned advocate has submitted that there was a delayed FIR because the complainant and others were busy in treatment of the deceased. His submission to the extent that the contents of the FIR not containing the name of the assailants are not unjustified given the circumstances that the complainant P.W.1 was never eyewitness.

I fully agree with the views expressed by the learned advocate appearing for the petitioner that the issues so canvassed are not enough for acquitting the accused persons. However, so far as the issues relating to not divulging the name of the assailants at the time of inquest and contractions in the evidence of the prosecution eyewitnesses, I am of the opinion that the learned trial

court on assessment and scrutiny of the evidence has come to such conclusion. The evidence of P.W.12, Second Investigating Officer of the case clearly states that the aforesaid four witnesses did not divulge the name of Radhe Shyam Bhagat and Pratap Bhagat and, as such, these names were first time pronounced in court by the witnesses, consequently, the learned Judge held that it would be inappropriate to rely upon their evidence and to come to a finding of guilt so far as the accused persons are concerned.

Mr. Chakraborty, learned advocate appearing on behalf of the prosecution drew the attention of this Court to the facts and the incident as is revealed from the FIR in the year 1994 as also the evidence collected by the First Investigating Officer. Attention of the Court has been drawn to the part of the cross-examination of P.W.11 where the name of the assailants appeared to be of different set of persons. To this Mr. Datta Gupta, learned advocate appearing for the petitioner states that the police authorities recorded the statement of witnesses twice.

However, a court of law while assessing the evidence cannot peruse the statement under Section 161 of the Code of Criminal Procedure and is to be restricted to the deposition made by the witnesses in court. I have assessed the reasons assigned by the learned trial court while arriving at its finding of acquittal and I am of the opinion that in a case of such nature where contradictions do appear, the learned trial court is well within its jurisdiction to disbelieve such witnesses.

Having regard to the same, I am of the opinion that there

is no scope for interference so far as the merits of the case is concerned.

Accordingly, CRR 1129 of 2005 is dismissed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

Department is directed to send back the lower court records to the trial court immediately.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)