

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 830 of 2006

Goutam Basfore & Ors.

-Vs-

State of West Bengal

For the Appellants : Mr. Milon Mukherjee, Sr. Adv.
Mr. Biswajit Manna

For the State : Mr. Neguive Ahmed, learned A.P.P.
Ms. Z. N. Khan
Ms. Amita Gaur

Heard on : 31.03.2022, 07.04.2022

Judgment on : 07.04.2022

Joymalya Bagchi, J. :-

Appeal is directed against the judgment and order dated 30.11.2006 passed by the learned Additional Sessions Judge, Fast Track Court-1, Ranaghat, Nadia in Sessions Trial No. 5(VI)2003 which corresponds to Sessions Case No. 8(5)2003, convicting the appellants for commission of offence punishable under Sections 302/34 of the Indian Penal Code and sentencing them to suffer imprisonment for life and to

pay a fine of Rs. 2,000/- each, in default, to suffer rigorous imprisonment for two months each.

Prosecution case as alleged against the appellants is as follows :

On 09.07.2002 around 7 p.m. Mina Basfore (P.W. 1) along with her son, Chandan (the deceased) and her neighbours viz. Raju Ram (P.W. 4), Milan Basfore (P.W. 6) and Sankar Balmiki (P.W. 15) went to Kanchrapara for shopping. On their way back they reached Kalyani Railway Station around 7:45 p.m. At that time appellants and others were seen in the railway platform. Mina and others proceeded down the railway line towards Sangam Cinema Hall. After proceeding for sometime Chandan wanted to have tea. He suggested Mina could have curd in a sweet meat shop. Accordingly, Mina and Milan went to a nearby sweet meat shop to have curd. At that time they heard sound of firing. Sankar Balmiki rushed and informed them that the appellants and 4 to 5 others have shot Chandan. Mina rushed to the spot and found his son lying with bleeding injury. Sankar disclosed that Krishna and others had shot him. Chandan was shifted to Kalyani Gandhi Memorial Hospital. There was prior enmity between Krishna Basfore and the deceased as the latter had protested over Krishna's business of illicit liquor. Mina lodged complaint at the police station resulting in registration of Ranaghat G.R.P.S. Case No. 39 of 2002 dated 10.07.2002 under Sections 302/34 of the Indian Penal Code and under Sections 25/27 of the Arms Act against the appellants. Investigation in the instant case was conducted by P.W. 22. He collected the injury report

and bed head ticket of the deceased at Kalyani Gandhi Memorial Hospital. He sent the body of the deceased for post mortem examination. He seized wearing apparels of the deceased. He arrested the accused persons. He collected the sealed container containing bullets which was recovered from the body of the deceased. He finally submitted charge-sheet against the appellants and one Jagannath Basfore showing him as absconder.

Charges were framed against the appellants under Sections 302 of the Indian Penal Code and under Sections 27/34 of the Arms Act. Subsequently, Jagannath Basfore was arrested and the same charges were framed against him. In the course of trial, prosecution examined 22 witnesses. Defence of the appellants was one of innocence and false implication. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 29.11.2006 and 30.11.2006 convicted and sentenced the appellants, as aforesaid. All the appellants were acquitted of the charge under Section 27 of the Arms Act read with Section 34 of the Indian Penal Code. Jagannath Basfore was acquitted of all the charges levelled against him.

Arguments at the Bar:-

Mr. Mukherjee, learned Senior Counsel with Mr. Manna appearing for the appellants argues presence of P.W. 1 at the place of occurrence appears to be improbable. Lodging of F.I.R. is shrouded in mystery. Though P.W. 1 claimed she lodged her complaint at Ranaghat G.R.P.S. after her son expired at 11:35 p.m. on 09.07.2002 at Kalyani

Gandhi Memorial Hospital, F.I.R. exhibited in the case appears to have been lodged at Ranaghat G.R.P.S. on the next day, i.e., 10.07.2002 at 09:45 a.m. Scribe of the F.I.R., Asoke Chatterjee (P.W. 2), however, claimed he came to Kalyani GRPS at 12 to 12:30 noon and wrote down the complaint. If so, how did the complaint get registered at 9.45 a.m.? Furthermore, there is no reflection of the F.I.R. in the inquest report prepared by P.W. 19 on 10.07.2002 at 13:05 p.m. Relying on these pieces of evidence, Mr. Mukherjee argues original F.I.R. was suppressed and the F.I.R. produced in Court is a concocted document. He further submits presence of other witnesses viz. P.Ws. 4, 6 and 15 at the place of occurrence is also doubtful. None of the witnesses had seen who had fired at the deceased. Deceased suffered gunshot injury on his back. There was loadshedding in the area at the time of occurrence. Hence, it was not possible for the deceased to notice who had fired at him. Dying declaration of the deceased as appearing from the depositions of P.Ws. 1, 6 and 15 must be taken with a pinch of salt. Post mortem doctor noted rigor mortis all over the body improbabilising the time of death. Bullet head was seized after two months. Chance of planting cannot be ruled out. Hence, the appellants are entitled to an order of acquittal.

Mr. Ahmed, learned Additional Public Prosecutor, deposed P.Ws. 1, 4, 6 and 15 had accompanied the deceased to Kanchrapara. On their way the incident occurred. Appellants were seen sitting together in the railway platform. After the incident deceased disclosed the names of the appellants as his assailants. History of assault disclosed by the patient

and recorded by P.W. 17 in the injury report marked as Exhibit-13, implicated appellant No. 3 Krishna and others. These circumstances establish the prosecution case beyond doubt.

Evidence on record- an analysis:-

P.Ws. 1, 4, 6 and 15 are the most vital witnesses to the case.

P.W. 1, Mina Basfore, is the mother of the deceased and the de facto complainant. On 09.07.2002, in the evening, she accompanied her son to Kanchrapara to buy groceries. Her neighbours viz. Raju Ram (P.W. 4), Milan Basfore (P.W. 6) and Sankar Balmiki (P.W. 15) also accompanied them. They returned to Kalyani Railway Station at 07:45 p.m. by train. At the Kalyani Railway Station, on the suggestion of Chandan, Mina Basfore and Milan Basfore went to a sweet meat shop. At the shop they heard sound of firing. Sankar Balmiki rushed to the shop and informed them that the appellants had shot Chandan. She came to the spot and found Chandan lying with gunshot injury. Chandan stated Krishna had shot at him. She took her son to Kalyani Gandhi Memorial hospital. She lodged complaint at Ranaghat GRPS.

P.W. 6, Milan Basfore corroborated P.W. 1. He deposed on the way to Kanchrapara, he had seen the appellant near Sangam Cinema Hall. When they were returning from the market, he accompanied P.W. 1 to the sweet meat shop. At that time they heard a gunshot and Sankar Balmiki rushed and told them appellants had shot at Chandan. They rushed to the spot and Chandan informed her mother that the appellants had fired at him. Thereafter, he was taken to the hospital.

P.W. 15, Sankar Balmiki also corroborated P.W. 1. He deposed when they returned from market, mother of Chandan (P.W. 1) and Milan (P.W. 4) went to a sweet meat shop to have curd. At that time he went to purchase medicine for his son. He was at a distance about 4/5 ft. from the place where Chandan was standing. He heard a gunshot. Chandan fell down at the spot. He saw the appellants run away from the place. P.W. 1 rushed to the place of occurrence. Chandan told her the appellants had shot at him. Victim was shifted to Kalyani Gandhi Memorial Hospital where he breathed his last. P.W. 4 Raju Ram had also accompanied P.W. 1 to the market at Kanchrapara. He stated on the way to Kanchrapara, he had seen the appellants sitting at Kalyani railway station. However, upon returning to Kalyani railway station he had left for Kalyani T.B hospital to give food to his father. He was a post occurrence witness and came to know that the appellants had fired at Chandan resulting in his death.

The aforesaid witnesses received further corroboration from P.W. 7 Rakesh Bansfore who had come to Kalyani railway station for marketing. He had seen the appellants sitting on the railway line at Kalyani. Around 8 p.m., he heard a sound of bullet. He saw the accused persons run away. He went to Kalyani Gandhi memorial hospital. He found the police of Kalyani GRPS at the hospital. P.W. 21, Arjun Paswan had accompanied Rakesh to Kalyani railway station. He heard the sound of gunfire and saw people running here and there. Appellants were seen running towards the railway station.

P.W. 17 is the doctor who was posted at Kalyani Gandhi Memorial hospital on 09.07.2002 as medical officer. During duty hours, he had medically examined the victim Chandan and made his noting in the bed head ticket. He proved the bed head ticket Exhibit-12. The patient had been brought by P.W. 1. He also prepared injury report which was marked as Exhibit-13. He asked the history of assault from the patient Chandan and noted the same in the injury report. During medical examination he found a penetrating injury centrally placed over T10 – T11 approximately. Surgical emphysema on right chest wall anteriorly. He noted hard metallic feeling under skin over right anterior chest wall. He removed the missile from the right anterior chest. He sent the missile to the Superintendent of the hospital for proper seal and label.

P.W. 16 conducted post mortem over the body of the deceased. He found one gunshot injury. Wound of entry was slightly lateral to the midline of the back at the level of lower end of right scapula. Exit wound through 3rd right intercostal space in the mid clavicular line. On dissection, thoracic cavity was found full of blood. Right lung was lacerated and collapsed.

He opined death was due to gunshot injury which is ante mortem and homicidal in nature. He proved the post mortem report (Exhibit-11).

P.W. 18 received written complaint of Mina Basfore from P.W. 20 at Ranaghat GRPS. P.W. 20 had carried the written complaint which

was handed over to him by Ram Narayan Singha in-charge of Kalyani out post.

Whether F.I.R. lodged by P.W. 1 is authentic?

Mr. Mukherjee, argued FIR registered in the instant case is not the first information report received by the police regarding the incident. In her deposition P.W.1 stated her son died at Kalyani Gandhi Hospital at 11.30 p.m. Thereafter, she came to Ranaghat G.R.P.S. and lodged written complaint which was scribed by a police personnel named Ram Balur as per her instruction and dictation. It is contended this document was suppressed and another complaint was subsequently manufactured to masquerade as F.I.R. I have considered the aforesaid statement of P.W. 1 in the backdrop of other circumstances of the case. The said witness in cross-examination clarified the manner in which the written complaint came to be drafted and lodged. She stated on the next day of occurrence one Asoke Chatterjee (P.W. 2) wrote the complaint. It was done at her quarter. On examination of the written complaint, Exhibit-5, it appears at the left hand column there is an endorsement stating the complaint had been handed over to P.W. 20 at Kalyani T.B. Hospital quarter for registration of the case at Ranaghat G.R.P.S. The aforesaid endorsement appearing on the body of the written complaint which is treated as First Information Report corroborates P.W. 1 with regard to the manner in which the written complaint came to be drafted and lodged at the police station on 10.07.2002 at 09.45 hours.

Mr. Mukherjee, further argued the First Information Report had been lodged at 09.45 hours on 10.07.2002 is ante timed and not worthy of credence. He states scribe of the F.I.R., Ashok Chatterjee, P.W. 2, came to Kalyani G.R.P.S. around 12:00/12:30 p.m. and drafted the F.I.R. Thus, the F.I.R. could not have been lodged at 09:45 hours. Particulars to the F.I.R. is also not noted in the inquest report prepared by P.W. 19 at 13:05 hours on the same day. Although, the aforesaid arguments appear attractive at the first blush, a deeper analysis of the factual matrix of the case would show there is no serious anomaly in lodging of the First Information Report. Chandan died at Kalyani General Hospital around midnight. On the next day, i.e., 10.07.2002 written complaint was scribed by Asoke Chatterjee (P.W. 2) in the presence of officer-in-charge Kalyani G.R.O.P. within whose jurisdiction the incident had occurred. Kalyani G.R.O.P. is within Ranaghat G.R.P.S. After drafting of the complaint, SI Ram Narayan Singha handed the document to P.W. 20, S.K. Pramanick who carried the same to Ranaghat G.R.P.S. and the F.I.R. came to be registered. It appears P.W. 2 made an incorrect approximation with regard to the time when he came to Kalyani G.R.P.S. which has created some confusion with regard to the time of registration of the First Information Report. However, the variation of time in the registration of the report is a couple of hours and does not affect the intrinsic truth of its contents. With regard to the absence of the particulars of the F.I.R. in the inquest report, it is pertinent to note P.W. 19 who conducted inquest in the present case

was posted at Kalyani police Station at the material point of time. Receiving information with regard to the homicidal death of Chandan, an unnatural death case being Kalyani P.S. UD case No. 160/2002 dated 10.07.2002 was registered and P.W. 19 proceeded to the hospital to hold inquest. At that time, he was unaware with regard to the lodging of the First Information Report at Ranaghat G.R.P.S. Accordingly, the F.I.R. Number of the criminal case lodged at Ranaghat G.R.P.S. was not noted in the inquest prepared by him and marked Exhibit-16. For the aforesaid reasons, I am of the opinion, evidence on record unequivocally proves the First Information Report was lodged by P.W. 1 on 10.07.2002 at Ranaghat G.R.P.S.

Time of death:-

Mr. Mukherjee, has also argued the time of death has not been proved as the P.M. doctor P.W. 16 has noted rigor mortis in all the limbs of the deceased. Elaborating on this issue he submits P.W.1 claimed her son died around 11.35 p.m. on 09.07.2002. Post mortem was conducted on 10.07.2002 by P.W. 16 who noted rigor mortis in all limbs. This improbabilises the time of death. In cross-examination, the doctor stated rigor mortis starts from about 2/3 hours of death and it exists upto 24 hours. As the post mortem was held within 24 hours from the time of death of the victim at the hospital, I am of the opinion, presence of the rigor mortis in all limbs of the deceased does not impact the veracity of the prosecution case.

Whether dying declaration is reliable?

It is further argued the so-called dying declaration is not tenable in law. None of the witnesses had seen the incident. Even the deceased could not have seen his assailant. Incident occurred at a place which was dark. Deceased had been shot from behind. Hence, it was impossible for him to identify who had shot at him. In this backdrop, the so-called dying declarations of the deceased to his mother P.W. 1 and other witnesses cannot be relied upon.

From an analysis of the evidence on record it appears though P.Ws. 1, 6 and 15 were near the place of occurrence, none of them had actually witnessed the shooting. P.Ws. 1 and 6 were inside a sweet meat shop while P.W.15 was buying medicines from a shop which was 4/5 ft. away from the place where Chandan was standing. All of them heard sound of firing and P.W. 15 saw the appellants running away from the spot. He rushed and informed P.Ws. 1 and 6 about the incident. When P.W. 1 came to the spot, his son informed her Krishna had shot at him. However, P.Ws. 6 and 15 stated the victim had implicated all the appellants. Soon thereafter, the victim was taken by P.W. 1 to a hospital in an ambulance driven by P.W. 11. At Kalyani Hospital, victim was treated by P.W. 17 who prepared the injury report which has been marked as Exhibit-13. In the injury report, P.W. 17 recorded as follows:-

“Pt. Was in pool of blood.

Pt. was conscious well oriented.

Asked question answered well on query. Pt. was told to be injured by some missile intentionally by Krishna Basfore & others.”

He also noted dying declaration of the victim may be recorded by competent person. Unfortunately, victim succumbed to his injuries.

From the aforesaid evidence on record particularly the notings of the treating doctor, it appears victim was conscious, well oriented and fit to make a statement at the time of admission. These circumstances lend credence to the prosecution case that the victim made oral dying declaration to P.W. 1 as well as P.W. 17 which was noted in the injury report, Exhibit-13.

I am also unconvinced by the submission of Mr. Mukherjee that the victim could not have seen his assailant. It is true there was load-shedding in the market place at the time of occurrence. However, there is evidence galore that the shops were open. P.Ws. 1 and 6 had gone to a sweet meat shop while P.W. 15 went to a medicine shop to buy medicines. It is unnatural to expect that the shops were open and carrying on business in darkness. The fact that the shops were open and carrying on business in the area, gives rise to the irresistible inference that alternate lighting arrangements were in the shop rooms and there was ample ambient light coming from the said shop rooms for the victim to identify his assailant. As the victim had been shot from behind, it is contended he could not have seen the assailant. Evidence has come on record appellant No. 3 Krishna is a neighbour and was well known to the victim. It is most probable when the victim was followed by appellant No. 3 and shot at, he would have turned his head and noticed his

assailant. Thus, I am of the opinion it is most natural that the victim had noted Krishna as his assailant and stated his name to his mother (P.W. 1).

Complicity of appellant Nos. 1, 2 and 4:-

With regard to the involvement of the other appellants, I find the prosecution is a divided house. Mr. Ahmed submits the other appellants were present along with Krishna at the time of occurrence. They had been seen together before the incident and had fled away from the spot immediately after the incident. P.Ws. 6 and 15 claimed deceased had implicated all the appellants in his dying statement.

I have scanned the evidence to test the aforesaid submissions made on behalf of the prosecution. Appellants were next door neighbours. They were known to each other. In this backdrop, even if the appellants were gossiping together, such conduct by itself cannot give rise to an inference of pre-concert to commit murder. Even the evidence that the appellants had been seen together prior to the incident is contradictory. While P.W. 6 stated he saw the appellants together near Sangam Cinema Hall, P.W. 7 stated they were sitting together at the railway platform. P.W. 1 and P.W. 15, who were accompanying P.W. 6, are silent with regard to the fact that the appellants were seen together before the incident. Hence, I find it difficult to come to an unequivocal conclusion that the appellants had been seen together before the occurrence. P.W. 15 stated he had seen the appellants fleeing away from the spot. P.W. 21, however, stated after the gunshot many persons were

running here and there. He saw the appellants going towards Kalyani Railway Station. From the aforesaid evidence, it appears after the gunshot, everyone ran helter skelter.

Under such circumstance, even if the appellants were seen running away from the spot together, it may not invariably give rise to a conclusion that they shared common intention to murder. On the other hand, this circumstance may have prompted P.Ws.4 and 6 to embellish the dying declaration of the deceased and include the names of the other appellants apart from Krishna in the said statement. Post mortem doctor (P.W. 16) found single gunshot injury on the deceased. This rules out the possibility of more than one person shooting at the deceased.

Motive of crime:-

Motive of commission of the crime has also been established. Evidence has come on record appellant No. 3 Krishna used to carry on business in illicit liquor which had been objected to by the deceased. Therefore, Krishna nursed grudge against the appellant and committed the murder. No such enmity between the deceased and the other appellants, however, is forthcoming.

Delayed seizure of bullet head - whether fatal to prosecution case?

Mr. Mukherjee also argues there is delay in seizure of the bullet recovered from the body of the victim. No conviction had been recorded under Section 27 of the Arms Act. P.W. 17, treating doctor stated the missile was recovered from the body of the victim and was kept in a

sealed packet in the hospital. Delay in seizure of the sealed packet from the hospital is a remissness in investigation and does not affect the credibility of the prosecution case. As the dying declaration of the victim to his mother (P.W. 1) and the history of assault noted by P.W. 17 in the injury report clearly establish the complicity of the appellant No. 3 Krishna in the murder, acquittal under Section 27 of the Arms Act does not affect his conviction under Section 302 of the Indian Penal Code.

Conclusion:-

In the light of the aforesaid discussion, I am of the opinion prosecution case against the appellant No. 3 Krishna has been proved beyond doubt. However, the complicity of the other appellants, namely, appellant Nos. 1, 2 and 4 in the crime is doubtful and they may be extended the benefit of doubt.

Appellant No. 3 Krishna is convicted under section 302 of the Indian Penal Code and sentence imposed upon him is upheld. Conviction and sentence of appellant Nos. 1, 2 and 4 are set aside.

Accordingly, the appeal is allowed in part.

Appellant Nos. 1, 2, and 4 shall be discharged from their bail bonds after expiry of six months in terms of section 437A of the Code of Criminal Procedure.

Period of detention suffered by the appellant No.3 during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

Let a copy of this judgment along with the lower Court records be forthwith sent down to the trial Court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

sdas/tkm/cm/as/akd/PA (Sohel)