

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 183 of 2005

Chunaram Majhi & Ors.

-Vs-

State of West Bengal

<i>For the Appellants</i>	:	Mr. Tapan Dutta Gupta
<i>Amicus Curiae</i>	:	Mr. Ramasish Mukherjee
For the State.	:	Mr. Narayan Prasad Agarwala Mr. Pratick Bose
Heard on	:	12.12.2022, 16.12.2022 & 20.12.2022
Judgment on	:	17.03.2023

Ananya Bandyopadhyay, J. :-

1. This is an appeal against the judgment and order dated 18.04.2005 passed by the Additional Sessions Judge, F.T.C. 4, Raghunathpur, Purulia in Sessions Trial No. 27 of 1996 arising out of Sessions Case No. 56 of 1995 convicting the appellants under Section 304 Part-I under Section 34 of the Indian Penal Code sentencing them to suffer rigorous imprisonment for five years each and to pay a fine of Rs.2,000/- each in default to suffer rigorous imprisonment for further six months.

2. Prosecution case originated from a complaint filed by the complainant being the brother-in-law of the victim inter alia stating the victim Judhithir Bauri worked along with a woman named Mayna Mejhan at Asansol Loco in the district of Purulia. They were in a romantic relationship. The said woman got married at a separate place and had come to her father's house. On 20.05.89 at about 10 a.m., the victim Judhithir Bauri left for Rampur in order to procure stone chips and on the way visited the aforesaid woman's father's house at Shyampur. After staying for some time, he proceeded towards Rampur and was intercepted at Gobag More by certain persons of Shyampur who assaulted him with iron road, bamboo lathi etc. at about 12 hours. On the next day at about 7 a.m., the family members of the victim received the information of his assault and recovered him. The victim was admitted in Asansol E. Rly. Hospital on 22.05.89 at 10:30 p.m. and he expired on 26.05.89 at night at about 1:10 hours. The complainant prayed for investigation of the case.
3. Based on the aforesaid complaint Nethuria P.S. Case No. 57 dated 27.05.1989 was filed under Sections 304 read with Section 34 IPC against certain villagers of Shyampur village. Investigation initiated which culminated in the submission of charge sheet no. 21 dated 09.04.2002 under Sections 304

read with Section 34 of the Indian Penal Code against the appellants. Appellants pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case cited 11 witnesses and exhibited certain documents.
5. Mr. Tapan Dutta Gupa along with Mr. Ramasish Mukherjee, Learned Advocates for the appellants submitted that the complainant did not mention the names of the accused persons and the same had been falsely implicated owing to village rivalry. It was further contended that the inquest report too did not mention the names of the villagers without any specific identification. It was strenuously argued that the charge framed against the appellants was defective and the provisions of Section 212 and 213 of the Code of Criminal Procedure were not complied with. The charge was framed without mentioning the manner in which the offence was committed by the appellants. The inquest report was prepared promptly. There was a delay to lodge the complaint without any explanation for such delay. It was further argued that P.W.1 being the wife of the victim did not enquire the whereabouts of her husband on the day of his departure from any neighbouring person and stated that her husband narrated the incident naming the assailants in presence of

many villagers whom she cannot name. The victim was brought to the house of the P.W.1 at about 10 a.m. and on 22.05.1989 at night her husband was admitted at the railway hospital at Asansol. During his stay at the house, the victim was treated by Nimai Kavi Raj medically. Immediate medical assistance could have saved the life of the victim. The Learned Advocate for the appellants have stressed on the evidence of P.W.5 who stated Mayna Mejhan disclosed to him that she was assaulted but did not mention the names of the assailants. The said Mayna Mejhan, a vital witness was not examined drawing adverse presumption under Section 114(g) of the Indian Evidence Act. The prosecution failed to establish its case and accordingly the appeal shall be allowed.

6. Mr. Narayan Prasad Agarwal, Learned Advocate for the State submitted the delay to lodge the complaint was caused due to the engagement of the victim's family with his medical treatment. Non disclosure of the names of the accused in the FIR and the inquest report did not render improbable the prosecution case in the initial stage of investigation. These documents cannot be considered to be an encyclopedia. Non-disclosure of the weapon is not fatal for the prosecution case. The prosecution has been able to prove its case and accordingly appeal shall be dismissed.

7. The circumspection of the prosecution evidence reveals P.W. 1 Sachi Bouri to be the wife of the deceased victim who seemed to have disclosed the names of the appellants to P.W.1. P.W. 1 stated her husband being brought to their house in semi conscious condition was able to talk in feeble voice. She further stated the presence of many villagers at the time her husband narrated the incident naming the miscreants. However, she could not state the names of those people. She further stated that Putuk Mal and certain people of Mandal community were also present. There was no communication or discussion with Narad Bouri before the complaint was lodged at the police station. The victim was brought to the house at 10 A. M. on 21.05.1989 and was admitted in railway hospital at Asansol on the night of 22.05.1989.
8. P.W. 2 learnt about the incident of assault of his nephew, the victim from a tea stall near Ramkali railway station. He reached the village of Shyampur along with Fatik Bouri and Jharilal. The assailants escaped seeing them including Chuna Majhi and Mansa Majhi. The victim had disclosed the names of the miscreants who assaulted him to P.W.2. During his cross-examination P.W.2 stated to have reached the village of Shyampur and found the injured on the bank of a bandh with a women sitting there.

9. P.W. 3 Gangadhar Bouri stated visiting village Shympur along with Fatik Bouri and Bachu Bouri and found Yudhisthir lying in injured condition on the aisle of a bandh with Mayna Mejhan sitting there. He heard from Yudhisthir the names of the persons who assaulted him.

10. P.W. 4, Pranab Kumar Mitra, had filled up the formal FIR.

11. P.W. 5, Tapan Kumar Tripathi had examined Mayna Mejhan who disclosed to him that she was assaulted by lathi without naming the assailants.

12. P.W. 6 Dipanjan Dasgupta conducted the post mortem examination of the dead body of the victim who found the following injuries:

“Parietal bruises, multiple over the chest wall, abdomen and back in different direction. Multiple nail marking over the neck.

Such injury can be caused by iron rod. This is marked Ext. 8.”

13. P.W. 7 Kanai lal Mondal, held inquest over the body of the victim.

14. P.W.8, was the first investigating officer who interrogated the victim Mayna Mejhan. He arranged for her medical examination and took steps to get her statement recorded

under Section 164 Cr.P.C. He also examined other witnesses and recorded their statements under Section 161 Cr.P.C.

15. P.W.9, Narad Bouri, the brother of P.W.1 stated to have heard the assault and murder of her brother-in-law. He did not visit Shyampur. His brother-in-law was brought from Shyampur village in senseless condition. He heard that Chunna Majhi and others had killed his brother-in-law. The written complaint was lodged by him and his signature was marked as Ext.1/1.

16. During his cross-examination P.W.9 stated that the victim was in senseless condition till his death.

17. P.W. 10, Anadi Nath Panda, is the second investigating officer in the instant case and collected the statement recorded under Section 164 Cr.P.C. conducted raid against the accused persons and submitted charge-sheet. The statement under Section 164 Cr. P.C. was marked as Ext.3.

18. During his cross-examination P.W. 10 stated he did not record any statement of any witnesses.

19. P.W.11, Kanai Lal Mondal held inquest in respect of the dead body of the victim and was entrusted to take the dead body at S.D. hospital Asansol for post mortem examination.

20. There is no eye witness to the incident of assault upon the victim on record. The statement recorded under Section 164

Cr.P.C. mentioned that Masa Majhi, Ram Roy, Rabilal, Boro Majhi, Nunka Majhi, Narad Majhi, Madan Majhi, Jhuna Majhi, and Budha assaulted her and the victim. However, Mayna Mejhan was not cited as a witness to corroborate her statement recorded under Section 164 Cr.P.C. and accordingly the document marked as Ext.3 cannot be taken into consideration. P.Ws.2 and 3 reached Shyampur village after the incident of assault was over and found Mayna Mejhan sitting there. Therefore, they did not see the assailants to flee from the spot. P.W.9 the complainant stated the victim to be continuously unconscious from the time he was brought to his house and admitted at the railway hospital in Asansol. P.W. 1 stated the victim to be in semi-conscious condition which does not corroborate with the statement of P.W.9. P.W.1 could not name the persons in whose presence the victim revealed the names of the assailants. The prosecution evidence is based on hear say and assumptions without cogent proof of involvement of the present appellants beyond reasonable doubt. Moreover, the investigation officer did not examine any eye witness in the case. The offending weapons were also not recovered.

21. Section 304 Indian Penal Code states as follows:

“Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to

murder shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death”.

22. In the instant case, the ingredients to constitute the commission under Section 304 of the Indian Penal Code could not be established. The investigation had been shoddy.
23. Under the facts and circumstances of the case any absence of proof of commission of the offence by the appellants beyond reasonable doubt, the prosecution has failed to prove its case and accordingly the appeal is allowed.
24. The appellants are acquitted of the charges. The appellant if in custody, be released forthwith if not required in connection with any other case. The appellants shall, however, furnish a bail bond to the satisfaction of the trial Court which shall continue for six months from date in terms of Section 437A of the Criminal Procedure Code.

25. CRA 183 of 2005 is disposed of accordingly.
26. I record my appreciation for the able assistance rendered by Mr. Ramasish Mukherjee, learned advocate, as *amicus curiae* in disposing of the appeal.
27. Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.
28. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)