

CRR 3464 of 2005

In the matter of : Dilip Karmakar

Mr. Bidyut Kumar Roy
Ms. Sima Biswas
..... for the State

None is appearing on behalf of the petitioner as well as private opposite parties.

Mr. B. K. Roy, learned counsel is representing the State.

This criminal revision challenges the judgment and order of acquittal passed by learned Second Court of Assistant Sessions Judge, Hooghly in ST Case No. 6 of 2002 corresponding to Mogra Police Station case No. 49 of 1996 dated 20th March, 1996 under Sections 326/34 of the I.P.C. Considering the age of this lis, I do not consider it expedient to adjourn the matter. Rather, I am inclined to dispose of the revisional application on merit.

Briefly stated, on 20th March, 1996 one Sri Manik Ghosh informed the Officer-in-charge of Bansberia Police Station verbally that on 20th March, 1996 at about 6.30 P.M. he was chatting with Dilip Karmakar, his friend. They were at the southern part of play ground of Bansberia Yuba Sangha. There was no electricity. Suddenly, he found 7-8

persons with torch light in their hand were approaching towards them. Dilip having smelt a rat, started running towards the eastern side of the field and those persons chased Dilip and they managed to catch hold of Dilip and assaulted him. Manik informed the Municipal Commissioner Ratan Das, members of Yuba Sangha also came out and brother of Dilip was informed. Dilip was taken to Imambara Hospital with injuries on his right hand and right jaw. The information since disclosed offence cognizable in nature Mogra P.S. case No. 49 of 1996 was registered. Police took up investigation which culminated into submission of charge sheet against the accused persons who stood the trial pleading their innocence. To bring home charges prosecution examined 10 witnesses. The victim Dilip Karmakar as P.W. 1 narrated that on 20th March, 1996 he along with Manik Ghosh were gossiping at the ground of Yuba Singha Bansberia. It was around 6.30 P.M. when from South-Eastern corner 7-8 persons came being armed with sword, napala, chopper, revolver and they had torch light with them. Having found them he started walking towards the eastern side of the ground but those persons surrounded him and attacked him with arms. He was assaulted on his head with sword. The miscreants landed blow on his right hand. He sustained injuries on his right cheek and his right jaw was fractured being assaulted by the miscreants who also opened fire. The victim received bullet injury on his back. Bablu Karmakar fixed the torch

light and landed a blow of chopper on his right cheek. The miscreants considered him to have died and left the place. He was thereafter rescued and was taken to Chinsura Sadar Hospital. After nine days he was discharged from the hospital and produced before the Court from where he was remanded to judicial custody and thereafter he was admitted to jail hospital where he was kept for fifteen days. The bullet was extracted from his back and his hand was amputated. During cross-examination he stated that Bablu Karmakar attacked him and Ram Karmakar also attacked him. The accused persons are residents of Bansberia Government Colony. He did not tell the Police that accused persons encircled him and caught hold of him and Ram Karmakar hit him with Napala on his head. He denied the suggestion that he could not identify the assailants. The other witness to the occurrence was P.W. 2 Manik Ghosh who stated that on 20th March, 1996 he was sitting at Yuba Sangha ground with the victim and they were gossiping. Suddenly he found that some persons were coming towards them. Dilip asked him to flee. Dilip himself rushed towards the Eastern side of the field. Those people started chasing Dilip and caught hold of Dilip. Manik Ghosh fled away. After ½ an hour Ratan Das came and asked him to take the injured to hospital when Dilip was lying on the ground under a Krishnachura tree. He had sustained serious bleeding injuries. Dilip was taken to Chinsurah Hospital and he was admitted to the hospital. He narrated the

incident to the Police which was reduced into writing and he put his signature on the paper. P.W. 3 is the Ward Commissioner Ratan Das. From his evidence it appears that Dilip was lying ground of Yuba Sangha with bleeding injuries on different parts of his person and he was taken to hospital. Parimal Karmakar is the brother of the victim who took the victim to hospital from the place of occurrence. Malay Karmakar is the other brother of the victim. P.W. 6 Babulal Kabiraj did not have any direct knowledge about the incident. P.W. 7 is the Doctor who attended the victim at Imambara Hospital on 20th March, 1996. On 23rd March 1996 he operated upon the victim. The victim had compound fracture on the right arm. Two lacerated wounds were on his face, his right hand was amputated and there was fracture on the mandible. The treatment sheet was admitted into evidence as Exhibit - @. During cross-examination he stated that on 20th March, 1996 the patient was not in a position to talk. P.W. 8 is the Constable of Police who accompanied the Officer-in-charge, Ajay Sinha to the hospital and carried the written information under the instruction of the Officer-in-charge to the Police Station. P.W. 9 is the witness to the seizure and P.W. 10 is the Investigating Officer. From his testimony it appears that he could examine the victim on 30th March 1996. On 21st March, 1996 for the first time he visited the victim when he was unconscious. On 30th March, 1996 he recorded the statement of the victim. Victim did not tell him that

accused persons carried torch light with them. He did not tell the I.O. that Bablu Karmakar was first to assault him on his head with sword. He told the I.O. that Ram Karmakar attacked him and assaulted him. No other witnesses were examined.

Upon perusal of the impugned judgment I find that learned Trial Court recorded order of acquittal on the ground that there was lack of corroboration. Learned Trial Court placed reliance upon the testimony of witnesses other than the victim and the Doctor who attended the victim. The attending facts of the case suggest that victim was caught hold of by the accused persons and his friend P.W. 2 left the place soon thereafter. Therefore the only person who had direct knowledge about the incident is the victim himself and he is the best witness in this case. P.W. 7 Doctor Bijon Kumar Sengupta attended the victim and he found several injuries including fracture injury over the person of the victim and there was amputation of his limb. The victim stood the test of cross-examination.

True it is the victim did not disclose the name of all the assailants but he stated that he was assaulted by Ram Karmakar and Bablu Karmakar. Learned Trial Court in my humble opinion gave unqualified importance to the testimony of witnesses who did not have any direct knowledge about the incident; apart from the fact that they took the victim to the hospital from the play ground of Yuba Sangha, where he was lying with injuries. Thus in my

humble opinion the impugned judgment suffers very serious infirmity.

I am inclined to set aside the order of acquittal and send the case back on remand with a direction upon the learned Trial Court to pronounce the judgment afresh after giving opportunity to the learned counsel representing the parties to place their case and if necessary to adduce evidence. The criminal revision is thus disposed of.

The Lower Court Record be sent down to the learned Court below.

Let a copy of the order be sent down to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)