

17.12.2024
Court No.13
Item No.1
Pk/ap

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

C.R.A. No. 614 of 2015
CRAN 3 of 2024

Sk. Yasin @ Madhu & Anr.
Versus
The State of West Bengal

Mr. Partha Sarathi Bhattacharyya,
Mr. Bhaskar Seth,
Ms. Swarnali Saha

...For the appellants.

Mrs. Rituparna Ghosh,
Ms. Afreen Begum.

...For the State.

1. The instant appeal is directed against the judgment and order of conviction dated 27th August, 2015 and 28th August, 2015 passed by the Learned Additional Sessions Judge, 3rd Court, Purulia, in Sessions Case No. 172 of 2011 leading to Sessions Trial No. 22 of 2012 thereby convicted the appellants under Sections 325 and 302 of the Indian Penal Code, 1860 and sentenced to suffer imprisonment for life and to pay a fine of Rs. 10,000/- (Rupees ten thousand only) and in default of payment of fine each has to suffer 6 months simple imprisonment for the offence under Section 302 of the IPC and are further directed to suffer simple imprisonment for 2 years and to pay fine of Rs. 2,000/- (rupees two thousand only) and in default of payment of fine each has to suffer 2 months

simple imprisonment for the offence under Section 325 of the IPC. Both the sentences are to run concurrently.

2. The facts relevant to the case are that on 23rd February, 2010, discussions took place between two religious communities residing in the Kustuka village. The discussions were with regard to leaving a space of 1 ft./1 ft. on one side of the road where a Shiv Mandir has existed for immemorial. The said space of 1 ft./1 ft. was being used for sacrificing Goats for panta puja and Kal Bhairab puja by the Hindu community. The said community wanted the said 1 ft./1 ft. space left without the concretization when the road as a whole was being paved with concrete.
3. In course of discussion, on 23.02.2010, the accused who belonged to the Muslim community agreed with the persons of the Hindu community that the said space would be left unconcretized.
4. However, on the next morning, one Sulpani Mahato, PW/8 found that the said 1 ft./1 ft. area had also been covered with concrete. He immediately rushed to the house of Dwijapada (the deceased victim), wherein PW/5 Jaladhar Mahato, PW/9 Ganesh Mahato, PW/2 Haladhar Mahato, and PW/1 Bhabani Mahato and another deceased Bhuthnath Ghoroi, had also gathered. They thereupon went to confront the accused, particularly, at the house of Majid Master, also known as Sk. Majid, the accused person, who lived on the other side of the road.

Upon not finding Majid Master, the aforesaid accused persons are stated to have caused grievous hurt and fatal injuries to one Sk. Sarjil (evidence of PW 8). This incident resulted in registering of FIR being No. 24 dated 24.02.20210 registered by the Purulia Muffasal P.S.

5. The aforesaid persons, thereafter, came back and were waiting at the Shiv Mandir for the arrival of Majid Master. Upon arrival, Majid Master stated that he alone could not decide as to whether the 1 ft./1 ft. area should be left uncovered and that he could not prevail upon the other persons of his community to leave the area open. As discussions with Majid Master were going on, the other accused persons Sk. Yasin (accused no. 4), Sk. Mohamad (accused no. 2), Sk. Kayum (accused no. 3), Sk. Sarif (accused no. 7), Sk. Hadis (accused no. 5) and Sk. Nuhu (accused no. 6) initially joined Sk. Majid. On instigation by Majid Master and when he shouted “hit/kill these fellows”, the accused persons picked up the implements of the labourers who were working for road pavement, and with a bhujali and a spear (ballam) sharp cutting instruments (not used for the purpose of concreting the road) and attacked Dwijapada Mahato, Ganesh Mahato (PW 9) and Bhutnath Gorai. The others ran away. Dwijapada, who got seriously injured in his leg, dragged himself inside the temple to save himself, as did Bhuthnath. The Shiv Temple was surrounded by a 2 ft. wall. Everything that happened inside the premises was

visible to any person even the persons standing on the road.

6. Ganesh (PW 9) was sitting on the mini wall and Sulopani (PW 8) was also lying there in a bleeding profusely state. The accused persons chased Dwijapada and Bhutnath inside the temple and continued to assault them with the weapons mentioned hereinabove. PW/8 and PW/9, namely, Sulpani Mahato and Ganesh Mahato saw that the accused Sk. Yasin and Sk. Sarif along with all the other accused persons were grievously using the ballam and other weapons on Diwajapada whose leg was already seriously injured before he entered the temple. Severe assaults were further committed on Ganesh (PW 9) who sustained grievous injuries.
7. Dwijapada died on the spot. His lifeless body was dragged by the accused persons to the eastern side of the temple and then taken to a buro bandh (canal). The body was, subsequently, dumped in the field adjacent to the buro bandh. Afterword, the accused persons thereafter fled away. Ganesh, Bhutnath and Sulpani were taken to the Purulia Sadar hospital by Lambodar Mahato and Samar Mahato respectively. Lambodar had witnessed the entire incident from the road while Samar was another villager who responded to Sulpani's cries for help. Bhutnath died three days after being admitted to the hospital. Despite severe injuries, both Ganesh and Sulpani survived.

Sulpani, however, lost one of his eyes as a result of attack.

8. Both Ganesh and Sulpani sustained grievous injuries but survived. FIR was registered on the complaint of Bhabani Mahato PW/1. PW/2 Haladhar Mahato wrote the complaint and the formal FIR was written and signed by PW/16, the O.C. of Purulia Mafarsal P.S.. PW/15, Sasthi Mitra collected the blood stained earth as well as the victim's wearing apparels.
9. Investigation was completed by PW/18, Hiralal Gorai, I/O. Charge sheet was filed against seven accused persons. The trial commenced.
10. PW-3, Dildar Mahato, went to the place of occurrence after hearing the commotion and shouting at the temple. He also saw Samar Mahato rescuing and carrying Sulpani in an injured condition to his house. He along with the other persons, thereafter, took Ganesh Mahato (PW 9) and Sulpani (PW 8) to Purulia Sadar Hospital.
11. PW-5, Jaladhar Mahato, was an eye-witness to the entire incident. He, however, denied having given any statement to the police or having deposed in course of trial. The Learned Trial Judge, however, did not find his evidence convincing enough to hold him as eye-witness.
12. PW-6 was Lambadar Mahato another eye-witness, who rescued Ganesh Mahato from the place of occurrence. PW-6 was not involved in the incident. He was travelling by bicycle and was passing by Kustika village on his way

to a market when he witnessed the entire incident. He also rescued Ganesh upon hearing his cries.

13. PW-7 was Samar Mahato, a resident of a neighbouring village Arita. He was also working as a labour engaged in the concrete paving of the road in question. He saw the assault but could only identify the injured victims and rescued them and took them to the hospital. He could not identify any of the accused persons except the accused no.1.
14. Sulpani Mahato (PW 8) and Ganesh Mahato (PW 9) were both injured in the incident and were, therefore, eye-witnesses. They have narrated the entire incident and role of Sk. Sarif (A7), Sk. Jaimat, Sk. Yasin (A4) and Sk. Hasimuddin. They had specifically identified Sk. Yasin @ Madhu and Sk. Sarif, the appellants herein, as the assailants. Their entire evidence was substantially clear and explicit about the details of the incident narrated hereinabove. Their evidence could not be shaken in cross-examination. They also deposed that they had stated and narrated the details of the incident, as deposed in the Trial, to the Investigating Officer of the case.
15. PW-10 was a Revenue Inspector, who along with PW-11, the local Amin measured the disputed area. PW-13 was Mr. Ratan Chandra Mahato, who conducted the inquest of the dead body of Dwijapada. PW-14 was Doctor Amal Nath, who conducted the post mortem of Dwijapada's body.

16. Based on the evidence presented by the prosecution, the accused persons were confronted with circumstances against them under Section 313 of the erstwhile Code of Criminal Procedure. The Learned Trial Judge found that there was insufficient evidence against the other accused persons except Sk. Yasin @ Madhu and one of his eight sons, namely, Sk. Sarif. The Learned Trial Judge has carefully analysed the entire evidence of each of the witnesses.
17. The genesis of the incident is the concretization of the 1 ft./1 ft. portion of the road where the Kal Bhairab Pujo was held and considered very scared by one religious community. The place was concretized despite an agreement on the previous night to leave the same open. He also found that the persons, who assembled to join Majid Master @ Sk. Majid, were engaged due to the murder of Sk. Sarjil. Two weapons were found in their custody and Ballam and Bhujali which were not used in concrete paving of a road. The weapons were not seized. There were other weapons also used by other accused persons belonging to the other religious community. The Learned Trial Judge found that the incident occurred in the spur of the moment and was not pre-planned or pre-meditated.
18. The Learned Trial Judge further set out, in detail, the injuries sustained by both the deceased persons, namely, Dwijapada and Bhutnath Gorai. The Court found that at

the initial stage of the assault by the accused persons, stood aggravated from an offence under the 2nd part of Section 304 of the Indian Penal Code to an offence under Section 302 of the Indian Penal Code. In this regard, the learned Trial Judge found that the actual second assault on Dwijapada and Bhutnath Gorai inside the temple premises, after initial assault on the road, amounts to an offence under Section 302 read with Section 325 of the Indian Penal Code.

19. The Learned Trial Judge has analysed all the leading cases where an incident resulting in grievous hurt that results from a mob attack, cannot be termed as pre-meditated.
20. Despite whereof, the Court found that the two accused persons, namely, Sk. Yasin @ Madhu and Sk. Sarif, the appellants herein, to be the persons, who actually inflicted the fatal injuries and found they are liable for conviction under Sections 325 and 302 of the Indian Penal Code.
21. The main thrust of the arguments of Counsel for the appellants, was based on the evidence of PW-18, the Investigating Officer of the case, who filed the charge-sheet. PW 18 deposed that none of the PWs stated the incident in course of examination under Section 161 of the Cr.P.C. what has been deposed in course of trial. The said witness had retired from the service when he was deposing.

22. It is, therefore, argued that the conviction of the accused persons based on the evidence of the prosecution witnesses, namely, PW-5, PW-6, PW-7, PW-8 and PW-9 was wholly erroneous.
23. This Court has summoned the case diary and has perused the said statements recorded under Section 161 of the Code of Criminal Procedure made by the PW-5 to PW-9. It cannot, by any stretch of imagination, be stated that there any serious inconsistencies between statements recorded under Section 161 of the Code of Criminal Procedure and the evidence deposed by the said persons in trial. The said arguments by the learned Counsel for the appellants, therefore, cannot be accepted.
24. Learned Counsel for the appellants further relies upon a judgment of the Hon'ble Supreme Court of India in the case of ***Md. Ishaque – Vs. – State of West Bengal*** reported in ***(2013) 14 Supreme Court Cases 581*** on the distinction between an offence under Section 302 and Section 304 Part-I of the Indian Penal Code.
25. This Court finds that there is clear evidence of the offence punishable under Section 302 of the Indian Penal Code that has been committed by the aforesaid two accused persons in view of the second round of assault inside the temple premises which resulted in the death of Dwijapada on the spot and Bhuthnath later in the Hospital.

26. The appellants and other accused persons had aggravated the offence under Section 325 of the IPC into the actual murder by reason of the second round of assault and the nature and degree thereof. The said injuries have been confirmed by the Post Mortem Doctor and duly corroborated by the evidence of PW-8 and PW-9, the eye-witnesses. The Mohd Ishaque's decision cannot be applied in the facts and circumstances of the instant case.
27. Hence, the prayer for conversion of the offence for which the appellants have been convicted from Section 302 to that under Section 304 Part-I of IPC, cannot be accepted for the reasons indicated specially hereinabove.
28. Even assuming for the sake of argument that the aggravated assault at the second round inside the temple could at best be an aggravation and a continuation of the first assault outside the temple, the appellants shall be liable for imprisonment for life which is one of the punishments under the first part of Section 304 of IPC to address a fact situation as available to us in the instant case.
29. In those circumstances, the conviction and the sentence imposed by the learned Sessions Judge, does not call for any interference. **C.R.A. No. 614 of 2015** fails and is hereby dismissed.
30. In view of dismissal of the appeal itself, connected application is also disposed of.

31. Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellants in terms of Section 428 of the Code of Criminal Procedure, 1973 corresponding to Section 468 of BNSS, 2023.
32. T.C.R., if any, be returned to the Learned Court below.
33. The parties and/or Registry of this Court shall communicate a copy of this order to the Learned Court below for necessary information.
34. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)