

07.03.2025
Court No.13
Item No.23
AP/sp/pk

CRA 156 of 2008
With
CRAN 2 of 2008 (Old No: CRAN 3178 of 2008)
With
CRAN 4 of 2009 (Old No: CRAN 2863 of 2009)
With
CRAN 5 of 2014 (Old No: CRAN 3831 of 2014)

Brindaban Mondal & Ors.
Vs.
The State of West Bengal

Mr. Prabir Majumder
Ms. Snehansee Majumder
Mr. Debraj Shit

... for the Appellants.

Mr. Prasun Kr. Dutta, Ld. A.P.P.
Ms. Poulami Bose

...For the State.

1. The instant appeal is directed against a judgement and/or order of conviction dated 28th January, 2008 and 29th January, 2008 passed by the Additional Sessions Judge, 2nd Court, Barasat, North 24-Parganas in Sessions Trial No.2(3)92 arising out of Sessions Case No.33(3)89. The appellants were convicted under Sections 147/148/149/302 of the Indian Penal Code. Out of five appellants three were died. The surviving appellants are Brindaban Mondal, appellant No.1 and Panchu Gopal Mondal @ Panchu Mondal, appellant No.3.

2. This Court has sought a report from the Dum Dum Central Correctional Home. It appears from the report that Prasanna Mondal @ Prasun Mondal died on 31st October, 2020 inside the Dum Dum Correctional Home Hospital. Pratul

Mondal expired on 16th May, 2017 at R.G. Kar Medical College and Hospital.

3. The prosecution case in brief is that the complainant Jalil Mondal, PW-1, was at a market on 3rd October, 1986 around 10:10 am. He came to know from someone that the accused persons were trying to cultivate and steal paddy on a land measuring about 1 Bigha. PW-1 owned 1 Bigha 56 Chittak of land under Dag No.3705 and 1804 in Mouza-Bagangram under Bongaon Police Station, North 24-Parganas. He rushed to his field from the market, along with deceased Unus Ali and other persons.

4. The accused persons, namely, Sudhir Mondal, Manik Mondal, Baka Mondal, Brindaban Mondal, Pratul Mondal and Panchu Mondal, chased to attack PW-1, Jalil Mondal and Unus Mondal, with 'Ballam' (spear), a Ramdao (large Chopper) and sticks and sickles in their hands.

5. PW-1 and Unus started to run away to save themselves. Unus who was stout and heavy, slipped and fell in the paddy field that had 1 ½ feet of water. The accused Pratul Mondal assaulted Unus with a spear and pierced his stomach. The other accused, namely, Panchu Mondal and Prasanna @ Prasun Mondal tried to draw out his spear from the body of the deceased by pressing their legs on his chest.

6. After the spear was taken out, Unus fell on the paddy field. The accused Brindaban Mondal thereafter assaulted

Unus with a Ramdao. Dulal Mondal assaulted Unus with a sickle. When a number of local villagers gathered at the place of occurrence, the accused persons fled away. Unus was taken to a local hospital by locals, where he died.

7. In the meanwhile, PW-1, Jalil Mondal finding the deceased seriously injured, ran away. He is stated to have thereafter taken a motorcycle from a local villager, namely, Rabindranath Adhikari, a local UpaPradhan, and had reached Bongaon Police Station to lodge the complaint in question.

8. The Investigation was started. The Inquest was performed on the victim, and later, the postmortem was performed. The postmortem report indicated the following injuries:-

- “1) Right elbow – incised wound 6” x 4” into skin deep.
- 2) Perforated wound above umbilicus 3” x 2” x abdomen deep all vessels, viscera at the side perforated and lacerated.
3. Incised wound on the upper part of abdomen on the left auxiliary line below chest wall. 9” x 3” continued from abdomen.
4. Incised wound on the right chest auxiliary line 6” x 2” and 10th rib right side congested.
5. Right kidney incised wound 3” x 2” with dark clotted blood forasic cavity present anti-mortem clots with infiltration of blood are surrounding the would present.

Right lung – lower and perforated 2” x half inch.

Death was due to shock and hemorrhage resulting from the aforesaid injuries which were anti-mortem and homicidal in nature. This is the P.M. report (Exbt. 7) bearing the signature of doctor (Exbt. 7/1) of S.R. Chakraborty. Out of the aforesaid injuries, Injury No. 2, 3,

4 and 5 are sufficient to cause death, because those injuries inflicted on the vital part of the body. The perforated injury might have been caused sharp pointed weapon. Injury No. 2 and 3, 4 and 5 might have been caused by a sharp cutting weapon. The perforated would appearing in serial No. 2 might have been caused by this type of phala (ballam)”

9. After seizure of weapons, wearing apparels of the deceased, the charge sheet was submitted in May, 1987 under Sections 147/148/326/304/379/411 of the IPC against the appellants and Sudhir Mondal. Charges were framed when the trial commenced.

10. PW-1, Jalil Mondal, was the complainant. He stated that on the day of Mahalaya in the year 1986 in the month of Ashin, his neighbor, one Unus was murdered. He narrated the incident as indicated in the complaint. He may not have actually seen the assault on the victim. He further stated that while running away had turned back and found, Pratul and Prasun and Panchu trying to remove the spear from the body of Unus. His evidence that Brindaban Mondal assaulted Unus with a Ramdao and Dulal assaulted the victim with a sickle, cannot be taken on face value, since he was running away from the place of occurrence. He identified the victim and narrated the entire incident to the police. He reiterated the incident as described hereinabove even in cross-examination. He stated that the accused persons belonging to a rival political party, as opposed to the victim and the witnesses.

11. PW-2, Nemai Kr. Mondal and PW-3, Sri Nilratan Roy are the seizure witnesses of weapons, clothes and seized paddy.

12. PW-5, Rabiul Hossain Mondal is an eye-witness. He deposed and identified all the accused persons on the dock. He was standing on the side of the pathway in front of the house of PW-1 and close to the house of Earali Mondal, PW-7. He saw the entire incident. He deposed that he saw the accused persons charging to attack PW-1 and the deceased.

13. PW-5 deposed that the accused Dulal Mondal was able to intercept the deceased. Pratul, Prasun and Panchu assaulted the victim with a spear. They also drew out the spear from the body of the deceased. Dulal Mondal thereafter assaulted the deceased with a sickle and Brindaban Mondal assaulted him with a Ramdao. When the deceased fell in the water-filled paddy field, and villagers started gathering, the accused ran away. His evidence is clear and explicit. His evidence could not be shaken in cross-examination. On the contrary, his evidence was strengthened by the nature of cross-examination conducted by the appellants.

14. PW-7, Earali Mondal, another eye-witness. He knew the deceased and the accused persons. He did not know PW-1. He was not in talking terms with him. On the date of occurrence, he was preparing to go to work when he heard alarms and shouting outside his house. He came out of the house and found the accused Pratul assaulting the victim with a spear. Panchu Mondal, Pratul and Prasanna tried to draw out the spear from the body of the victim.

15. PW-7 deposed that even after the victim fell down, Brindaban Mondal assaulted the victim with a Ramdao and Dulal assaulted him with a sickle. His evidence is clear and was not was not shaken in cross-examination. He stated in cross-examination that he was the first person to reach the place of occurrence after the incident. The victim was lifted from the water in presence of PW-7. He had witnessed the entire incident and also saw the victim being carried to a local hospital. He found the spear in the hands of one of the accused persons.

16. PW-8, Kousar Ali Molla, is the third eye-witness and reiterated the entire incident. His land was adjacent to the land of PW-1, Jalil Mondal. He saw the accused persons while he was going to his own field. He was told by the accused not to enter the land and was returning home thereafter. From his house he saw PW-1 and the deceased going towards their fields and the accused chasing them. He also saw the victim fall down in the paddy field and Dulal Mondal assaulting him with a Ramdao. He identified Dulal Mondal, Prasanna and Panchu Mondal and stated that he had seen them assaulting the victim with a spear in the abdomen of the deceased. Brindaban Mondal thereafter assaulted the victim with a Ramdao. He stated that he heard the accused persons stating that the victim should be finished.

17. PW-7 further deposed that when local people assembled at the place of occurrence, the accused fled away. He saw the accused being removed from the place of occurrence to a hospital. He also stated that the accused could not attack PW-1 as he had fled away and took shelter near a house. The police made seizure of paddy and other articles in his presence.

18. In course of deposition, Sudhir Mondal, father of Prasun Mondal, Pratul Mondal and Panchu Mondal had died due to natural causes. PW-8 not only described the entire incident which he saw but also gave a detailed description in cross-examination of the incident, he named the persons who arrived at the place of occurrence after the incident. He described the place of occurrence and its surrounding areas in great detail in cross-examination.

19. The evidence of PW-10, Illahi Box Dafadar, is not reliable since he admitted in cross-examination that his eye sight was defective.

20. PW-12 identified the post mortem report of Dr. S.R. Chakraborty, who has died during the Trial.

21. PW-13 is the Investigating Officer of the case, who has narrated the steps taken in the investigation. He has stated that he reached the place of occurrence and prepared a sketch map, seized the wearing apparels of the deceased and some weapons used by the accused persons. He conducted inquest on the deceased and sent the body for post mortem. He

received the post mortem report. He was cross-examined by the accused. He also confirmed having recorded the statement under Section 161 of the Code of Criminal Procedure of PW-2, PW-5 and several other witnesses. The appellants did not bring any witness.

22. The accused persons were examined under Section 313 of the Cr.P.C. and were confronted with all the incriminating circumstances against them. The accused denied knowledge of several suggestions and also stated as false in answer to some of them.

23. The Trial Judge has carefully analyzed the entire evidence on record. The Trial Judge found that minor discrepancies in the evidence between the witnesses to the prosecution cannot be fatal to its case. This Court is of the view that it is only when the witnesses for the prosecution, uniformly and without any discrepancy, depose in favour of the prosecution, one could suspect their evidence. Minor discrepancies are always possible between witnesses who depose bona fide in a trial. The prosecution witnesses did not have any enmity with the accused persons. No such enmity has come on record.

24. The evidence of PW-1 was outside the scope of the FIR and an exaggeration thereof. Counsel for the appellants would argue that no credence should, therefore, be given to the evidence of PW-1. This Court, however, notes that any FIR is

not an encyclopedia. The case of the prosecution is not only proved by the evidence of PW-1 for that the eye witness evidence of PW-5, PW-7, PW-8 and PW-10. Injuries on the victim inflicted by the appellants are corroborated with the post mortem report.

25. The Trial Court also found in the argument of the defence that the body of the deceased was not identified to be unsustainable since the post mortem report of the original Doctor together with inquest report have duly confirmed the identity of the victim.

26. The Trial Court also rejected the arguments that the FIR was pre-dated. The delay in lodging the FIR was rejected on the ground that the witnesses were not cross-examined by the defence on the said issue. The Court found that the statements of the eyewitnesses are wholly reliable.

27. In so far as the discrepancies and the alleged exaggeration in the evidence of PW-1, reference was made by the Trial Court to the decision in the case of ***Bharwada Bhoginbhai Hirjibhai -Vs. – The State of Gujarat*** reported in **(1983) 3 SCC 217** particularly para 5 thereof on the minor discrepancies in the evidence of witnesses.

28. After dealing with all the arguments of the appellants, the Court found the appellants guilty of offence punishable under Sections 147/148/149/302 of the Indian Penal Code. The appellants have been sentenced for life imprisonment and

to pay fine of Rs.5000/- each and in default of payment of fine, the appellants shall undergo rigorous imprisonment for one year under Section 302/149 of the Indian Penal Code.

29. This Court is in complete agreement with the findings of the learned Trial Judge.

30. For the reasons stated hereinabove, the appeal fails and is hereby dismissed. Consequently, all connected pending applications, if any, are also dismissed.

31. Let the Trial Court Records and a copy of the judgement be sent back to the court below.

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

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)