

CASE NO.:  
Appeal (crl.) 1101 of 2006

PETITIONER:  
Sukumar Roy

RESPONDENT:  
State of West Bengal

DATE OF JUDGMENT: 31/10/2006

BENCH:  
S. B. Sinha & Markandey Katju

JUDGMENT:  
J U D G M E N T  
(Arising out of SLP(Criminal) No. 2822/2006)

MARKANDEY KATJU, J.

Leave granted.

This appeal has been filed against the impugned judgment of a Division Bench of Calcutta High Court dated 22.12.2005 in Criminal Appeal No. 5 of 1988 by which the conviction of the accused, Sukumar Roy under Section 304 Part I read with Section 34 IPC, has been upheld.

Heard learned counsel for the parties and perused the record.

The crux of the prosecution case is that on 11.8.1984 at about 12 o'clock the deceased Prafulla Nayak was collecting seedling from his land at mouza Amtala, the accused Phani Bhusan Roy, his son accused Sukumar Roy, his wife Urmila Roy alias Tobi Roy and Tarani Roy, the wife of his elder brother entered into the land with lathi, bhali etc., in their hands and an altercation ensued between the parties when Phani told the deceased that he purchased the land and as such he would cultivate the land. In course of the altercation the accused Phani struck Prafulla on his head with lathi and the accused Sukumar hit Prafulla with a bhali which pierced the abdomen of Prafulla. The local people on hearing hue and cry rushed to the place of occurrence and in the meantime the accused persons took to their heels. The informant with the help of villagers took the deceased to Nandigram P.H.C. where he was declared dead. The I.O. on the basis of F.I.R. lodged by Pashupati Nayak took up the investigation, and he visited Nandigram P.H.C. where he held an inquest of the dead body of Prafulla (vide Exhibit 4). The I.O. also visited the spot and seized alams from the place of occurrence (vide Exhibits 2 and 6) and examined the witnesses. He also seized one tangi with stain of mud, one blood stained bhali from the house of accused Bhanu Das (Exhibits 3 and 7) and prepared sketch map (Exhibit 4). The I.O. also sent the napkin with which the body of the deceased, Prafulla was wrapped along with blood stained weapons to the forensic science laboratory for chemical examination. The I.O. (P.W.13) Sadhan Chandra Saha also sent the dead body to Tamluk hospital through Constable No. 33, Nimai Chandra Biswas for post mortem examination. Since S.I. Sadhan Chandra Saha was transferred from the station the

next man S.I. Gour Gopal Roy (P.W.14) took up the investigation and in course of examination he examined Sankar Bhunia, collected post mortem report and the report of the chemical examiner and ultimately submitted charge-sheet against the accused persons under Sections 147, 148, 149, 447/304 IPC. The accused Sukumar Roy was charged under Section 304 Part I read with Section 34 IPC and he pleaded not guilty to the charge.

The defence case as appearing from the trend of cross-examination as also his examination under Section 313 Cr.P.C. is that he is innocent and land bearing Dag No. 743 at mouza Amtala was purchased by him from Prafulla (deceased) and in spite of warning the deceased who was uprooting seedling from the said land did not leave the place and as a result an altercation ensued and in the course of that altercation he attacked Prafulla with a bhali (ballam) and accidentally it pierced the abdomen of Prafulla. It is otherwise claimed by the appellant, Sukumar that he did this in exercise of his right of private defence to protect his property and body. However, during the trial the learned trial court found sufficient evidence against the appellant and he was pleased to convict him under Section 304 Part I read with Section 34 IPC and sentenced him to suffer rigorous imprisonment for ten years. The High Court upheld this conviction, and hence this appeal.

Admittedly, the incident occurred on plot No. 743 at mouza Amtala. The facts are that the that accused Sukumar and his brother purchased a portion of plot No. 743 from the deceased Prafulla. However, the land was not demarcated. It is claimed by the accused that he purchased the western side of plot No. 743 whereas the deceased Prafulla claimed that the appellant and the deceased were co-sharers of plot No. 743 where the incident occurred. It is the prosecution case that the deceased Prafulla was assaulted by the appellant, Sukumar with a bhali (ballam) which pierced his abdomen and as a result his intestine and omentum came out through the wound. The incident of assault upon the deceased on that particular date i.e. 11.8.1984 was seen by P.W.1, Pasupati Nayak, P.W. 2 Nidhiram Nayak, both being cousin brothers of the deceased, P.W.3, Bhudar Chandra Das, neighbour, P.W.4, Sankar Kumar Bhunia, neighbour, P.W. 5, and Surapati Jana, labour engaged by Prafulla. All of them in chorus voice stated that it was the appellant, Sukumar, who hit the deceased Prafulla with bhali which pierced his abdomen and as a result he died. The testimonies of these witnesses as to the cause of death of the deceased find corroboration from Dr. Saroj Ranjan Bhowmick (P.W.9), who held the post mortem examination of the deceased. The doctor (P.W.9) on dissection of the body of the deceased found the following injuries:

- (i) One penetrating wound 2" x >"x 4" deep over the right side of the abdomen at the level of umbilicus about 2" lateral. Intestine and omentum coming out through the wound. On dissection the wound was seen penetrating to the intestine and injuring abdominal scrota. The whole peritoneal cavity was full of blood about 2/ 2-1/2 lbs.
- (ii) One incised wound 2" x =" x <" muscle deep over the thinner eminence right palm.
- (iii) One incised wound over the vault of the scalp right side 2 =" with bone scratch mark.

The doctor opined that the death was due to shock and haemorrhage as a result of abdominal injury which was anti mortem and homicidal in nature. He however opined that injury No. 1 & 2 can be caused by sharp cutting weapon and injury No. 3 on the vault of the scalp can be caused by lathi or blunt substance.

From the facts it is evident that the deceased Prafulla died an unnatural death which was homicidal due to injuries which were anti mortem in nature and it is the appellant, Sukumar who inflicted injury upon the body of the deceased with bhali (ballam) causing his death.

There were five accused in the case of which three were acquitted and two convicted. One of those convicted viz. Phani Bhushan Roy is dead and hence this appeal is now only on behalf of the accused, Sukumar Roy.

From the facts narrated above, it is evident that there is no dispute that the deceased Prafulla was assaulted by the appellant Sukumar Roy with a bhali (ballam) which pierced the abdomen of Prafulla as a result of which his intestine and omentum came out through the wound.

The medical officer who held the post mortem on the deceased in his examination has stated as under:

"(a) One penetrating wound 2" x >"x 4" deep over the right side of the abdomen at the level of umbilicus about 2" lateral. Intestine and omentum coming out through the wound. On dissection the wound was seen penetrating to the intestine and injuring abdominal scrota. The whole peritoneal cavity was full of blood about 2/ 2-1/2 lbs.

(b) One incised wound 2" x =" x <" muscle deep over the thinner eminence right palm.

(c) One incised wound over the vault of the scalp right side 2 =" with bone scratch mark.

(d) Liver abscess and pus was coming out and 8 ounces of partly digested rice and vegetable in the stomach was found.

Death was, in my opinion, due to shock and haemorrhage as a result of abdominal injury described above, which are ante mortem and homicidal in nature. Injury No. 1 can be caused by bhali or ballam. Injury No. 2 can be caused by sharp cutting weapon. Incised looking wound on the vault of the scalp is possible with lathi or blunt substance".

From the above evidence it is evident that the deceased Prafulla died due to the wound in his abdomen which was 4 inches deep. In our opinion this shows the intention of the assailant to kill or to cause such bodily injury as is likely to cause death. There is no reason to disbelieve the evidence of the prosecution witnesses that it was the appellant Sukumar who caused the injury on Prafulla, the deceased. The prosecution evidence of the eye-witnesses is corroborated by

the medical evidence.

Learned counsel for the appellant submitted that it was a case of self-defence because the appellant had purchased the land in question from the deceased who had entered into his land in spite of warning and as a result an altercation ensued. He contended that the deceased and his men assaulted the accused person and the injury on Prafulla was an accidental one in the scuffle which followed. We do not agree.

From the evidence it is clear that the deceased and his men were unarmed and there was no provocation on their part. It also seems that the deceased and the appellant are co-sharer in the land being plot No. 743. There is no evidence on record to show that the deceased and his men assaulted the appellant and his family members. Hence, in our opinion the conviction under Section 304 Part I read with Section 34 IPC was fully justified.

Learned counsel for the appellant contended that there were unexplained injuries on Urmila and Tarani. It is well settled that minor unexplained injuries will not help the case of the accused. Moreover, the nature of alleged injuries on Urmila and Tarani has neither been stated by the accused persons nor have any injury reports of any doctor been produced, and no doctor has been examined as a witness in support of such injuries.

Thus, there is no force in this appeal. The appeal is accordingly dismissed.