SUPREME COURT OF INDIA

Nazrul Mondal

Vs.

State of West Bengal

(G Nanavati and V Khare JJ.)

23.10.1997

JUDGMENT

NANAVATI, J.

This appeal by the convicted accused is directed against the judgment and order passed by the High Court of Calcutta in Criminal Appeal No. 308 of 1984. The High Court has confirmed the conviction of the six accused under Section 302 read with section 149 IPC.

All the six convicted accused had applied to this Court for special leave to appeal against the judgment of the High Court. This Court dismissed the application of accused Jamiruddin, Hanif and Jirafat and leave was granted to the present three appellants as it was submitted that their names were not mentioned in the First Information Report. What was alleged against the accused was the on October 11, 1980 at about 3.00 p.m. they along with 14 other accused had assaulted and Killed Babar Ali. According to the prosecution this incident was witnessed by Malin Hossain (PW-1) brother of the deceased, Kalam Biswas (PW-3), Sahida Khatun (PW-4) daughter of the deceased, Nasiruddin Biswas (PW-5) son of the deceased and Firujtullah (PW-6). According to the prosecution the motive for killing Babal Ali was that accused Niamat had filed a criminal case against Babar Ali. After remaining into custody he had come out of the jail 7 days before the incident. The evidence of the eye witnesses was challenged on the ground that they were all related to the deceased. The evidence of PW-4 Sahida Khatun and PW-5 Nasiruddin was also challenged on

the ground that it was doubtful if they were really with the deceased at that time. PW-3's presence near the place of incident was challenged for the reason that he had no reason to be there and thus was a chance witness. Evidence of PW-1 was challenged on the ground that he could not have seen the incident as he has admitted in his cross examination that when he went to the place of incident his brother had already fallen down dead. The trial court did not find any substance in these contentions. The presence of PW-1 was believed as his house was only about 100 feet away from the place of incident. If found that PW-3 and PW- 4 were accompanying their father as he was going to the market for purchasing cloth for them. It also believed the presence of PW-3 as he stood corroborated by Hasem Ali (PW- 8) who has deposed that soon after the incident he was informed by PW-3 about the incident and on the basis of that information he had made a telephone call to the Karimpur Police Station and informed the police. The trial court also held that the evidence of eye witnesses was corroborated by the find of cycle and 20 kg. of jute from the place of incident and also by the medical evidence. It, therefore, convicted the six accused named by the witnesses. It may be stated that out of 20 accused who were charged sheeted, 9 were discharged by the learned Sessions Court before framing the charge and 5 were acquitted after the trial. The High Court confirmed the conviction of all the 6 accused as it agreed with the appreciation of evidence by the trial court and the findings recorded by it. As stated earlier, even though all the 6 convicted accused had applied to this Court for special leave, the same was granted to only present three appellants. Leave was granted on the basis that the names of three appellants did not appear in the First Information Report. We find after going through the First Information Report that they are mentioned as accused in the First Information Report. Their names appear in it at serial Nos. 4, 5 and 6. What was now contended by the learned counsel was that though their names are mentioned no specific allegation is made regarding the part played by them in killing the deceased. In our opinion even this submission is not quite correct factually. it does contain and allegation that the deceased was attacked by all the accused named in the First Information Report. That would mean that there was an allegation against accused Nos. 4 5 and 6,. the appellants herein, that they had assaulted the deceased and had thus taken part in killing the deceased. The learned counsel for the appellants raised all the grounds which ere urged before the courts below. Besides that the learned counsel also contended that the evidence of the daughter and son, PWs-4 and 5 respectively, ought not to have been accepted as no blood stains were noticed on their clothes. It was submitted that, if as stated by them, they were only two or four steps ahead of the deceased, then in all probability their clothes would have been stained with blood because the injuries caused to the deceased were such that they had led to spurting of blood. the evidence on record clearly discloses that they were walking ahead of the deceased. Even though they have said that they were walking ahead by four or five steps, it is likely that they wee at a little distance from the deceased. As stated by them their attention was drawn only when they had heard the cry raised by their father. The deceased was assaulted after he was surrounded by the a accused. Therefore, there was no possibility of their being so near and their clothes becoming blood becoming blood stained. It was also submitted that if they were really walking a few paces ahead of the deceased, then in that case they should have heard the sound of footsteps of 20 accused who have alleged to have assaulted the deceased. How and n what manner the accused had reached that place has not been brought out in cross-examination of these two witness. It is possible that the accused had approached the deceased quietly and their foot steps had not created sufficient noise to attract the attention of PWs-4 and 5. In absence of any cross examination on that point it would be sheer speculation to say that foot steps of 20 persons would have created sufficient noise and that ought to have attracted the attention of PWs-4 5.

It was also submitted that as the incident had taken place almost in the village itself, number of independent persons would have witnessed the incident. In our opinion this is not a permissible submission. it was not established that over and above these witnesses others had seen the incident. PW-3. on the contrary, in his cross- examination has stated that when this incident had taken place besides him only PWs-4 and 5 were there and others came after he had raised crises.

It was next contended that evidence of PW-3 ought not to have been accepted because he has stated in his evidence that he had on that day gone to take bath in the 'doba' (a small tank) near the house of Babr Ali and that after taking bath he was proceeding on the pathway behind Babr Ali. It was submitted that the site plan does not show that there was any 'doba' near the house of babar Ali. In his evidence the Investigating Officer clearly stated that there was tank near the house of Babar Ali. Merely because the tank is not shown in the site plan, the evidence of the eye witness and the Investigating Officer cannot be discarded. In our opinion the courts below were right in placing reliance on the evidence of PWs-1, 3, 4 and 5. They have given good reasons for believing them and rejecting the contentions raised on behalf of the defence. We do not find any flaw in the appreciation of evidence of those witnesses. This appeal is, therefore, dismissed. The accused are ordered to surrender to custody to serve out the remaining part of their sentence.