

# SUPREME COURT OF INDIA

Bishu Sarkar

Vs.

State of West Bengal

Crl.A.No.703 of 2008

(Adarsh Kumar Goel and Uday Umesh Laiit,JJ.,)

09.03.2017

## JUDGMENT

**Uday Umesh Laiit,J.,**

1. This appeal is directed against the Judgment and Order dated 06.06.2006 passed by Calcutta High Court in Criminal Appeal No.255/2000.

2. Six persons namely Tarit Kundu, Bishu Sarkar, Sahadeb Sarkar, Sasthi Sarkar, Paresh Sarkar and Sukumar Ghosh were tried in Sessions trial No.18 of 1998 arising out of Raiganj Police Station case No.117 of 1995 for having committed the murder of one Raju Bose on 27.03.1995. All the accused were found guilty by the trial court vide its judgment and order dated 05.08.2000 and sentenced to undergo life imprisonment for the offences under Section 302 read with Section 34 IPC. In Criminal Appeal No.255 of 2000, the High Court acquitted accused Nos.5 and 6 namely Paresh Sarkar and Sukumar Ghose but affirmed the conviction and sentence with respect to other four accused. Special Leave Petition (Criminal) No.5755 of 2006 preferred by accused No.1 Tarit kundu was dismissed by this Court on 01.12.2006. This appeal by other three convicted accused challenges their conviction and sentence as affirmed by the High Court.

3. The prosecution principally relies on the testimony of PW 2 Nepal Dey, PW 3 Gopal Dey and PW 5 Kanai Sharma. According to PW2 Nepal Dey,

“The occurrence took place on the western side of the National Highway-34. I heard a hue and cry coming from the side of NH 34 when I was fixing up a fencing in my house. As soon as I heard the hue and cry I gave a glance to the place wherefrom there was raising of hue and cry. I saw accd. Tarit Kundu, Sahadeb Sarkar, Sasthi Sarkar, Bishu Sarkar, Sukumar Ghosh and Paresh Sarkar, in all six persons caught hold the collar of shirt of Raju Bose and assaulting him by fist and blows. Accd. Sukumar Ghosh and Paresh Sarkar gave the order to kill Raju Bose. Then accd. Sasthi Sarkar, Bishu Sarkar, Sahadeb Sarkar had remained engaged in catching hold of Raju

Bose. Accd. Tarit Kundu gave a blow on the back of Raju Bose with the help of a sharp-cutting weapon like 'bhojali'"

4. The testimony of PW3 Gopal Dey was to the following effect:-

"I was washing my hands and legs by the water of tube well within my house at the relevant point of time. I heard hue and cry coming from the road side. I gave a glance towards the road side and I saw that a dispute was going on over there. I know the persons who were involved in this dispute. Accd. Sasthi Sarkar, Tarit Kundu, Bishu Sarkar and Sahadeb Sarkar were engaged in assaulting the victim Raju Bose by fist and blows. Accd. Tarit Kundu gave a blow on the back of the victim Raju Bose with the help of a 'bhojali' which I noticed."

5. According to PW 5 Kanai Sarma:-

"I had proceeded near the place of occurrence. I saw the accused Tarit Kundu who had given a blow on the back side of Raju Bose with the help of a 'bhojali'. Acd. Tarit Kundu, Sahadeb Sarkar, Bishu Sarkar, Sasthi Sarkar, Paresh Sarkar and Sukumar Ghosh caught hold of Raju Bose and there was a scuffle between themselves."

6. The medical evidence on record was unfolded through PW 9 Dr. Rashbehari Ghosh who found:-

"One stab-wound transverse like margin incised 2" long on the left side of chest, 12" from midline on the back. Tracing the track it is found to perforate lung upper part of lower lobe through and through including other soft tissues in the well causing fatal bleeding.

Opinion:- Death was due to shock as a result of ante mortem wound and haemorrhage as stated, homicidal in nature.

The wound was inflicted from backside and perforated whole of the lung."

7. The injury found in the post mortem report was completely consistent with the ocular version of prosecution witnesses PW 2, PW 3 and PW 5 and the author of this injury according to the witnesses was accused No.1 Tarit Kundu. Special Leave Petition at the instance of Tarit Kundu having been dismissed the question that now arises is with regard to the involvement of the present appellants. The allegations coming from all the witnesses are consistent that none of the present appellants had dealt any blow by any weapon and all that they did was to participate in the scuffle. It is true that PWs 2 and 5 assert that the present appellants had caught hold of Raju Bose. But it is not clear from the record whether such act was so intended to enable accused No.1 to deal the fatal blow. Further, PW 3 is completely silent on this aspect.

8. In the circumstances we deem it appropriate to grant benefit of doubt to the present appellants and acquit them of the charge under Section 302 read with Section 34 IPC. This Appeal is thus allowed and the conviction And sentence recorded against the present appellants is set aside. The appellants shall be released forthwith unless their custody is required in connection with any other matter.