

Criminal Appeal

**PRESENT: THE HON'BLE MR. JUSTICE ASHIM KUMAR BANERJEE
AND
THE HON'BLE MR. JUSTICE KALIDAS MUKHERJEE**

JUDGMENT ON: June 9, 2010.

CRA NO. 532 OF 2003

**Tarun Chakraborty
Vs.
The State of West Bengal**

POINTS

BURDEN OF PROOF – REASONABLE DOUBT – Charge to be proved beyond reasonable doubt – Statement Made to Investigating Officer – Best evidence being documentary – When presumption would go against the prosecution – Whether prosecution is to prove the charge beyond reasonable doubt – Importance of the statement under Section 161 Cr.P.C. – Whether it can be used as substantive evidence – Indian Evidence Act 1872, S 106 – Code Of Criminal Procedure 1973, S 161 .

FACTS

From the evidence of the I.O. it is clear that **accused** availed himself of leave for 12 days on and from 31.01.2003. Now the incident having occurred on 20.01.2003, the presumption would be that he was present at his place of posting on 20.1.2003 because he was on leave at a much later period. The prosecution is to prove that on 20.01.2003 the accused came from his place of posting to the village and committed the crime. On this point the I.O. has stated that excepting the statement of witnesses, there was no evidence. The I.O. has further stated that he did not make any investigation as to the presence or absence of the accused on 20.01.2003 at his place of posting. So as to the presence of the accused at the place of occurrence on 20.01.2003, there is no evidence. When the best evidence being documentary in nature was available from his place of posting and

the I.O. having not investigated on that point, the presumption would go against the prosecution. We have already pointed out about the prosecution case that P.W. 5 and P.W. 6 have witnessed the occurrence, cannot be believed, inasmuch as, there was no corroboration from P.W. 1 and P.W. 2 as to their presence at the P.O. at the time of occurrence. Now the abstinence of I.O. from making any investigation on the point of absence of accused at the place of work on 20.1.2003 strengthens the fact that P.W. 5 and P.W. 6 were not present at the time of occurrence and their testimony as to the assault inflicted by the accused is not credible.

HELD

It is for the prosecution to prove the charge beyond reasonable doubt. It is in evidence that the accused was an employee at Katwa Sub-Jail and he was not on leave on the date of occurrence. It was the duty of the prosecution to prove his presence at the time and place of occurrence on the date of incident. It is not for the accused to prove that he was not present at the P.O. on the date of occurrence. The defence is to show that the incident as alleged by the prosecution did not happen in the manner as alleged and that it happened in any other way.

Para 22

The statement of the witness before the I.O. recorded under Section 161 Cr.P.C. can be used for the purpose of contradiction, but, not for corroboration. The importance of the statement under Section 161 Cr.P.C. is circumscribed to the point of contradiction only and if the statement of the witness on material particulars or vital points differs from his testimony on oath before the Court, then it can be urged by the defence that his testimony being at variance with his earlier statement made before the I.O., cannot be believed because he is making statement for the first time at the time of trial and it is an after thought. So, that portion of statement made by P.W. 5 to the I.O. cannot be taken into consideration being not permissible under the law. It cannot be used as substantive evidence.

Para 25

CASES CITED

1. (1984) 1 SCC 319 [Bhugdomal Gangaram and others Vs. State of Gujarat];
2. (2006) 1 SCC Cri.603 [Ram Kishan and others Vs. State of U.P.];
3. (2007)3 SCC Cri. 601 [Sunder Lal Vs. State of Rajasthan] &
4. (2006)12 SCC 306 [Vikramjit Singh alias Vicky Vs. State of Punjab] and
5. (2003)3 SCC 175 [Vimal Suresh Kamble Vs. Chaluverapinake Apal S.O. and another].
6. AIR 1998 SC 1007 [State of U. P. Vs. Lakhmi];
7. AIR 1992 SC 2100 [State of Maharashtra Vs. Sukhdeo Singh and another].

For the Appellant: Mr. Kazi Safiullah
Mr. Kazi Safiuddin Ahmed
Mr. Subir Ganguly
Mr. Manas Kumar Das

For the State :Mr. R. K. Ghosal
Ms. Rupa Bandyopadhyay

KALIDAS MUKHERJEE, J.

1. This appeal is directed against the judgment of conviction and sentence passed by learned Additional Sessions Judge, 1st Fast Track Court, Barasat, 24 Parganas (N) in Sessions Trial No. 15(5) of 2003 corresponding to Sessions Case No. 54(4) of 2003 convicting the appellant and

sentencing him to suffer R.I. for life and to pay fine of Rs.5,000/- in default to suffer R.I. for one year under Section 302 I.P.C.

2. The case of the prosecution, in short, is that Alok Chandra Chanda lodged information with the Titagarh P.S. alleging that on 20.1.2003 at about 10.00 A.M. while he was in his grocery shop and his two daughters were not at home, Tarun Chakraborty, the son-in-law of the informant went to his house and hacked his wife with a sharp weapon. As his wife cried out, the neighbouring people came to his house and the accused Tarun Chakraborty fled away. On getting the information, he along with his two daughters came back home and saw that the victim was lying with bleeding injuries. She was taken to Dr. B. N. Bose Hospital where she was declared dead. It has been alleged that the informant's third daughter Mili was married with the accused Tarun Chakraborty of Saradapally, P.S. Titagarh in the year 1992. After a few days of marriage, disturbances arose between the couple. For the last three months Mili started living in the house of the informant with her son, because her husband Tarun Chakraborty and the mother-in-law Itirani Chakraborty used to beat up Mili. Accused Tarun put pressure on Mili for fetching money from the house of the informant and the informant gave him Rs.60,000/-. Thereafter the accused demanded more money for the construction of his house and as the informant could not give that amount of money, they started committing torture upon the daughter of the informant. For the said reasons, the accused came to his house and finding Ruma Chanda alone, hacked her to death. After the incident the accused fled away and many persons of the locality saw the occurrence. After receipt of the complaint, the Titagarh P.S. Case No. 20 dated 20.1.2003 was started under Section 302 I.P.C. After completion of investigation the charge sheet was submitted. The charge was framed under Section 302 I.P.C. The accused pleaded not guilty and claimed to be tried.

3. Mr. Safiullah submits that according to P.W. 1 some persons reported that Tarun Chakraborty committed the murder and Mili was not present in the house at the time of occurrence. It is contended that P.W. 1 in his cross-examination could not say who informed him of the occurrence. Mr. Safiullah submits that according to P.W. 6 none reported to him about such occurrence. It is contended that according to P.W. 11 the history of assault was recorded, but the name of the assailant was not recorded. Mr. Safiullah has drawn our attention to the contradictions taken in the cross-examination of the I.O. where the I.O. has stated that P.W. 5 and P.W. 6 stated to him that they did not see the occurrence. It is submitted that P.W. 2 a neighbour of P.W. 1 did not see the occurrence. Mr. Safiullah submits that the daughter Mili has come back to her father's house and, as such, the animus is to be considered. Mr. Safiullah contends that animosity was prevailing between the parties. Mr. Safiullah submits that the learned Trial Court recorded the conviction on the basis of surmise and conjecture. It is contended by Mr. Safiullah that suspicion however grave cannot form the basis of conviction. It is contended that P.W. 2, P.W. 3 and P.W. 4 were declared hostile and P.W. 5 Mili claims to be the eye-witness, but, according to the prosecution case as set forth in the F.I.R., both the daughters were not present in the house and after getting information P.W. 1 came back home with his daughters. Mr. Safiullah submits that P.W. 5 and P.W. 6 did not see the occurrence and there is no eye-witness in this case.
4. Mr. Safiullah appearing on behalf of the appellant submits that the accused is a Government employee and on the date of incident he was in his place of posting at Katwa and the I.O. did not investigate on this point whether he was present at his place of posting on the date of occurrence or not. Mr. Safiullah has drawn our attention to the evidence of I.O. where the

I.O. has stated in his cross-examination that he did not enquire about attendance of Tarun Chakraborty in his place of work on 20.1.2003 and he did not get the same done by any other officer. The I.O. has further stated that he did not feel it necessary to examine the Warden of Katwa Sub-Jail even after receipt of the message from Katwa Sub-Jail. Mr. Safiullah has referred to and cited the decisions reported in *(1984) 1 SCC 319 [Bhugdomal Gangaram and others Vs. State of Gujarat]*; *(2006) 1 SCC Cri.603 [Ram Kishan and others Vs. State of U.P.]*; *(2007)3 SCC Cri. 601 [Sunder Lal Vs. State of Rajasthan]* & *(2006)12 SCC 306 [Vikramjit Singh alias Vicky Vs. State of Punjab]* and *(2003)3 SCC 175 [Vimal Suresh Kamble Vs. Chaluverapinake Apal S.O. and another]*. Mr. Safiullah submits that the learned Trial Judge was not justified in passing the judgment of conviction and sentence and it should be set aside.

5. Mr. Ghosal appearing on behalf of the State submits that there was no suggestion to the P.Ws. that the accused was not present on the date of occurrence in the village. Mr. Ghosal relies upon the evidence of P.W. 1, although in the cross-examination, P.W. 1 could not say the name of the person from whom he came to know about the occurrence. Mr. Ghosal submits that the plea of alibi taken by the accused has not been proved. Mr. Ghosal submits that the accused was absconding and, subsequently, he surrendered before the Court. Mr. Ghosal submits that the offending weapon was recovered. Mr. Ghosal contends that the prosecution case finds corroboration from the medical evidence. Mr. Ghosal submits that the accused took leave for twelve days and he could not prove that on the date of occurrence he was not present in the village. Mr. Ghosal has referred to the decision reported in *AIR 1998 SC 1007 [State of U. P. Vs. Lakhmi]*; *AIR 1992 SC 2100 [State of Maharashtra Vs. Sukhdeo Singh and another]*.

6. It has been stated in the F.I.R. that the informant was in his grocery shop at the time of the occurrence and his two daughters were also not present in the house. Ruma Chanda, the wife of the informant, was alone in the house. It has further been stated therein that after getting information the informant along with his two daughters went home and saw that his wife was lying with bleeding injuries. Evidently, therefore, there was no eye witness of the occurrence as per the prosecution case as set forth in the F.I.R.
7. P.W. 1 is the informant. It is in his evidence that on 20.01.2003 he was in his shop and at about 10.45 A.M. some persons came to his shop and reported that Tarun Chakraborty had murdered Ruma Chanda, the wife of P.W. 1; hearing that news he went home and found that his wife was lying on the staircase in the courtyard of his house in injured condition. It is also in his evidence that he found the neighbours and his daughters there. In the F.I.R. it has been stated that the informant after getting news came to his house with his daughters and in his evidence he (P.W. 1) has stated that after reaching his house he found the neighbours and his daughters there. At another place of examination-in-chief he has stated that at the time of occurrence Mili was not present in the house.
8. At one place of the cross-examination P.W. 1 has stated that his daughters were not present in his house at the time of occurrence. In another place of cross-examination he has stated that his daughters came to his house prior to his reaching there. He could not say the name of the persons who reported such incident to him. He has stated that Tarun Chakraborty has murdered his wife with a 'hansua'. There is, therefore, grave discrepancy between the F.I.R. and the evidence of P.W. 1 on the point of the presence of his daughters at the place of occurrence. Such discrepancy as to the presence of P.W. 5, Mili, under the circumstances of the case raises strong suspicion.

9. P.W. 2, a neighbour of P.W. 1, has stated that on hearing shouts she came out of her house and from the road she found that Ruma was lying on the staircase in bleeding condition. She has stated that she did not find any other person in the house of Ruma Chanda. In the cross-examination she has stated that there was a dispute between Tarun Chakraborty and Ruma Chanda. It is in the evidence of P.W. 1 that there was love affairs between Mili and Tarun Chakraborty which culminated in their marriage. But, after their marriage there was quarrel between them as Tarun Chakraborty used to demand money on different occasions and it has been alleged that P.W. 1 has paid Rs.60,000/- to Tarun Chakraborty. It, therefore, follows that there was inimical relation between the accused and the family of the informant. P.W. 2 in his cross-examination stated that she did not see anybody to assault Ruma Chanda. This evidence of P.W. 2 carries much importance, inasmuch as, she is a close-door neighbour of P.W. 1.
10. P.W. 3 Sanjoy Biswas has stated that he was in his house at the time of occurrence. He was declared hostile. P.W. 4 Ajoy Kundu could not say who murdered Ruma Chanda. He was declared hostile.
11. P.W. 5 Jhuna Chakraborty @ Mili is the daughter of P.W. 1. She is also the wife of the accused. It is in her evidence that she had love affairs with Tarun Chakraborty and thereafter they got married; after 5/6 months of marriage she was subjected to torture by her husband for demand of money from her father; Tarun Chakraborty used to assault her brutally; after two years of marriage she gave birth to a male child; Tarun Chakraborty demanded Rs.60,000/- and, accordingly, her father paid him the said amount.; Tarun again demanded 1½ cottas of land from her father; Tarun assaulted her brutally 2/3 months prior to 20.1.2003 and so she returned to her father's house along with her child.

12. It is in the evidence of P.W. 5 that on 20.1.2003 at about 9/9.30 A.M. her father, sister Barnali and herself went out of their house leaving her mother alone there; her father went to his grocery shop. It is in her evidence that she stood near a cloth shop of their house for purchasing a blouse; suddenly 15/20 minutes later, she heard hue and cry and rushed to their house; she saw that her husband Tarun was in an excited mood and entered into their house; her mother was washing clothes on the staircase and Tarun assaulted her repeatedly with 'hansua'; she started shouting and the nearby people came. She has further stated that some neighbours tried to catch hold of Tarun, but, he threatened to kill them, if anyone proceeded towards him. In the cross-examination she could not say the name of the blouse shop or the owner of it. She could not say the names of the persons who tried to catch hold of Tarun.
13. P.W. 6 named Barnali, is another daughter of P.W. 1. She has stated that on 20.1.2003 at about 9.45 A.M. while she was opening the shop, at that time somebody reported to her and she rushed to her house and met her elder sister at the gate of their house and found that Tarun Chakraborty was assaulting her mother with the help of 'hansua'; her mother was then cleaning utensils on the staircase; Tarun assaulted her mother on head and other parts of her body. She has further stated that Tarun threatened others to kill them, if anyone proceeded towards him. In the cross-examination she could not say the name of such neighbours who tried to resist Tarun. She has further stated that they were in their respective shops at that time; none reported to her at her shop about such occurrence, but, while returning home, she came to know about such occurrence. She has further stated that neighbours assembled there on hearing hue and cry and they came behind them. It is to be borne in mind that the P.W. 2 Jyotsna Bhanja who is a next door neighbour of P.W. 1 stated that none was found at the house of Ruma Chanda when she went there. So it appears that

neither P.W. 5 nor P.W. 6, the daughters of P.W. 1 reached the place of occurrence immediately after the incident. From the evidence of P.W. 2 it is clear that she did not find anybody at the place of occurrence at the time of her arrival there. So the evidence of P.W. 5 and P.W. 6 that they had seen Tarun to assault their mother does not find corroboration from the evidence of P.W. 2 Jyotsna Bhanja.

14. P.W. 7 a neighbour of P.W. 1, is the seizure witness. P.W. 8 is also a witness to the seizure of one 'hansua' which was recovered from a pond by a person.

15. P.W. 9 Lipika Mondal is another neighbour of P.W. 1 who was declared hostile. P.W. 10 is the doctor who held post mortem examination. P.W. 11 is another doctor who has stated that Ruma Chanda was brought dead in the hospital. P.W. 12 is the ASI of Police who made endorsement on the written complaint and filled up the formal F.I.R. P.W. 13 is the constable who took the dead body of Ruma Chanda to the hospital. P.W. 14 is the police officer who accompanied the O.C. of Titagarh Police Station and went to the P.O. and found blood and the offending weapon which was recovered.

16. P.W. 15 is the police officer who prepared inquest report. P.W. 16 has stated that S.I. R. K. Chandra recovered one 'hansua' in the tank of Khagen Das in his presence. P.W. 17 is the police officer who went to the P.O. and was present at the time of recovery of the offending weapon. P.W. 18 is the I.O.

17. As regards the involvement of the appellant Tarun Chakraborty, it is in the F.I.R. and in the evidence of P.W. 1 that none of their family witnessed the occurrence. It is only the daughters, that is, P.W. 5 and P.W. 6 who have stated that they saw the accused to inflict assault on their mother with the help of 'hansua'. The I.O. has stated that P.W. 5 Jhuna Chakraborty did not state to him that on hearing hue and cry she rushed to the house of her

father and saw the occurrence and that she went out to purchase a blouse. The I.O. has further stated that P.W. 5 did not state to him the amount of money paid by her father to Tarun Chakraborty or that Tarun Chakraborty told her father to transfer his 1½ cottas of land in his favour. P.W. 6 did not state to I.O. that she found Tarun to assault her mother with 'hansua'.

18. It is clear from the evidence of P.W. 18 that on material point of infliction of assault, P.W. 5 and P.W. 6 did not make such statement to the I.O. and their testimony that they had seen the occurrence, suffers from contradiction with their earlier statements made before the I.O. Such contradictory statements on vital points, made for the first time at the time of trial, raise doubt as to their testimony of having witnessed the occurrence. So, from the evidence of P.W. 1, P.W. 2, P.W. 5 and P.W. 6 it is clear that none has seen the appellant to inflict assault upon Ruma Chanda. In other words, there was no eye witness of this case.
19. The defence contention as it appears from the cross-examination of the P.W.s and the examination of the accused under Section 313 Cr.P.C. is that the accused is an employee at Katwa sub-Jail and that on the date of occurrence he was on duty at the place of his posting. In other words, the defence contention is the plea of alibi. The accused in his statement under Section 313 Cr.P.C. stated as against question Nos. 14, 44 and 52 that he was present at the place of his duty at Katwa and did not know about the incident. He has further stated that it was a conspiracy against him and he has been falsely implicated in this case. On this point, the I.O. (P.W. 18) has stated that Tarun Chakraborty is an employee of Katwa Sub-Jail as Jail Warden. He has stated that he sent message to his place of work at Katwa sub-Jail and it was learnt from the written message that Tarun Chakraborty availed himself of leave for twelve days on and from 31.1.2003; Katwa Sub-Jail did not inform him of the

presence or absence of Tarun Chakraborty on 20.1.2003; he came to know on enquiry that on 20.1.2003 Tarun was not present at his place of work at Katwa sub-Jail; he sent message to O.C. Katwa on 30.1.2003 with the request to detain Tarun Chakraborty, Warden of Katwa Sub-Jail in connection with this case; inspite of his best effort he could not apprehend the accused and the accused surrendered in Court on 07.02.2003. It is in the evidence of the I.O. that he interrogated the accused as per the order of learned S.D.J.M., Barrackpore and thereafter he took the accused on police remand; during the custody of accused under police, he took him to various places, but did not find anything.

20. The evidence of I.O. that he came to know on enquiry that 20.01.2003 Tarun Chakraborty was not present at his place of work at Katwa Sub-Jail is not supported by any material whatsoever. On this point the I.O. has stated in cross-examination that the witnesses saw the accused on the spot on 20.01.2003 and, as such, he stated that the accused did not attend his place of work on 20.01.2003; he did not examine any Warden or employee of Katwa Sub-Jail during investigation; he did not make any enquiry from the Jailor or Superior Officer of Katwa sub-Jail regarding the presence or absence of the accused on 20.01.2003 at his place of work; he did not investigate as to when the accused was allotted duty and for which period on 20.01.2003. He has further stated in his cross-examination that he did not enquire about the attendance of Tarun Chakraborty in his place of work with regard to his presence on 20.01.2003 and he did not get the same done by any other officer; he did not feel it necessary to examine the Warden of Katwa Sub-Jail, even after the receipt of the message from the Sub-Jailor, Katwa.

21. From the evidence of the I.O. it is clear that Tarun Chakraborty availed himself of leave for 12 days on and from 31.01.2003. Now the incident having occurred on 20.01.2003, the

presumption would be that he was present at his place of posting on 20.1.2003 because he was on leave at a much later period. The prosecution is to prove that on 20.01.2003 the accused came from his place of posting to the village and committed the crime. On this point the I.O. has stated that excepting the statement of witnesses, there was no evidence. The I.O. has further stated that he did not make any investigation as to the presence or absence of the accused on 20.01.2003 at his place of posting. So as to the presence of the accused at the place of occurrence on 20.01.2003, there is no evidence. When the best evidence being documentary in nature was available from his place of posting and the I.O. having not investigated on that point, the presumption would go against the prosecution. We have already pointed out about the prosecution case that P.W. 5 and P.W. 6 have witnessed the occurrence, cannot be believed, inasmuch as, there was no corroboration from P.W. 1 and P.W. 2 as to their presence at the P.O. at the time of occurrence. Now the abstinence of I.O. from making any investigation on the point of absence of accused at the place of work on 20.1.2003 strengthens the fact that P.W. 5 and P.W. 6 were not present at the time of occurrence and their testimony as to the assault inflicted by the accused is not credible.

22. It is for the prosecution to prove the charge beyond reasonable doubt. It is in evidence that the accused was an employee at Katwa Sub-Jail and he was not on leave on the date of occurrence. It was the duty of the prosecution to prove his presence at the time and place of occurrence on the date of incident. It is not for the accused to prove that he was not present at the P.O. on the date of occurrence. The defence is to show that the incident as alleged by the prosecution did not happen in the manner as alleged and that it happened in any other way. The learned Trial Judge has wrongly held that in this case the accused has failed to

prove his alibi by adducing reliable and cogent evidence. In the case of Vikramjit Singh @ Vicky vs. State of Punjab reported in (2006) 12 SCC Cri. 306 (Supra) it has been held in para 14 as follows:

“14. Section 106 of the Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule e.g. where burden of prove may be imposed upon the accused by reason of a statute.”

In para 15 it has been held by the Apex Court as follows:-

“15. It may be that in a situation of this nature where the Court legitimately may raise a strong suspicion that in all probabilities the accused was guilty of commission of heinous offence but applying the well-settled principle of law that suspicion, however, grave may be, cannot be a substitute for proof, the same would lead to the only conclusion herein that the prosecution has not been able to prove its case beyond all reasonable doubt”.

The learned Trial Judge was, therefore, not justified in placing reliance upon the evidence of P.W. 5 and P.W. 6.

23. P.W. 5 has identified the ‘hansua’ (Mat. Ext. – 1) by which Tarun Chakraborty allegedly assaulted his mother-in-law. In the cross-examination she has stated that she knows the description of ‘hansua’ which is a curved weapon. She has further stated that she did not find any curve on Mat. Ext. 1.

24. P.w. 6 in his cross-examination has stated that she knows the ‘hansua’ which is a curved sharp cutting weapon having successive curves thereon. She has stated that she did not find any curve on material exhibit 1. The doctor P.W. 10 has stated in cross-examination that he

did not note the tailing marks in the post mortem report. From the evidence as stated above it appears that there was difference between the weapon seized and the weapon which was produced and shown to the witnesses at the time of trial. As to the recovery of the said weapon it is in evidence that it was recovered from a pond. It is not the case of the prosecution that it was recovered pursuant to the statement or at the instance of the accused. The alleged recovery of weapon, therefore, does not lend any support to the contention of Mr. Ghosal.

25. Mr. Safiullah has drawn our attention to the evidence of P.W. 18 (I.O.) where he has stated that Jhuna Chakraborty (P.W. 5) stated to him that her father, sister and herself were out of the house, so they had escaped. Mr. Safiullah wants us to believe that from such recording of the statement of P.W. 5 by the I.O., it is clear that because of the absence of P.W. 1, P.W. 5 and P.W. 6 they escaped assault from the accused and that it proves that P.W. 1, P.W. 5 and P.W. 6 were not present at the time of occurrence. We are unable to accept this contention of Mr. Safiullah. The statement of the witness before the I.O. recorded under Section 161 Cr.P.C. can be used for the purpose of contradiction, but, not for corroboration. The importance of the statement under Section 161 Cr.P.C. is circumscribed to the point of contradiction only and if the statement of the witness on material particulars or vital points differs from his testimony on oath before the Court, then it can be urged by the defence that his testimony being at variance with his earlier statement made before the I.O., cannot be believed because he is making statement for the first time at the time of trial and it is an after thought. So, that portion of statement made by P.W. 5 to the I.O. cannot be taken into consideration being not permissible under the law. It cannot be used as substantive evidence.

26. Mr. Ghosal has referred to the decision reported in AIR 1998 SC 1007 (Supra) wherein it has been held that if an accused admits any incriminating circumstances appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy. The facts of the instant case are different and the aforesaid decision has no manner of application here. Mr. Ghosal has referred to another decision reported in AIR 1992 SC 2100 (Supra) wherein it was held that reliability of evidence depends upon its quality.
27. Thus from the evidence on record it is very much clear that none has seen the occurrence and the prosecution has failed to prove that the accused who is an employee in the Katwa Sub-Jail, came to the village and he was the perpetrator of the crime. From the evidence of the I.O. it is also clear that he did not make any investigation on this point. From the evidence it also transpires that there was inimical relation between the two families and there was matrimonial discord between the accused and his wife (P.W. 5). Such being the position, we are of the considered view that the prosecution has failed to prove the charge against the accused person and he is found not guilty of the charge brought against him.
28. The appeal is allowed. The judgment of conviction and sentence as recorded by the learned Trial Judge is set aside. The appellant is acquitted of the charge and be set at liberty, if not wanted in any other case.
29. Let a copy of this judgment be sent to the concerned Correctional Home where the accused is now detained.
30. Let a copy of this judgment along with the L.C.R. be sent to the learned Court below immediately.

31. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.

(Kalidas Mukherjee, J.)

Ashim Kumar Banerjee, J.

I agree,

(Ashim Kumar Banerjee, J.)