

Criminal Appeal

Present :

The Hon'ble Mr. Justice Ashim Kumar Banerjee

And

The Hon'ble Mr. Justice Raghunath Ray

Judgment on 03.09.2010

C.R.A. No.474 of 2003

Shyam Lal Routh

-VS

The State of West Bengal & Others

Points:

Minor omission- Omission to have thumb impression on the injury report and in the absence of eye-witnesses whether conviction can be granted.-
Indian Penal Code Ss.307; 326

Facts:

Kabita Routh got married with Shyamlal Routh. The couple had a discord resulting litigations in Court. On August 31, 2001 at about 10.30/10.45 a.m. Kabita was approaching Howrah Court. When Kabita was passing through C.S.T.C. garage at Foreshore Road, Shyamlal attacked her. He grabbed her and tried to kill by striking her with a razor. The learned Judge held the accused Shyamlal guilty of the offence and sentenced him rigorous imprisonment for ten years coupled with a fine of Rs.2000/- and in default to suffer rigorous imprisonment for another six months.

Held:

When a patient with injury approached a doctor, it was the paramount duty of the doctor to attend the patient rather than to complete the official formalities first. From the evidence of the doctor we find, according to him,

if the patient was unattended for some more time it would have been serious. In such view, the omission to have thumb impression on the injury report could not have any significance. Para 10(c)

Once the victim herself came forward and deposed to support the prosecution and such deposition had consistent corroboration from the doctor, lawyer and his clerks we do not have any hesitation to affirm the judgment of conviction even in absence of any other eye-witnesses. 10(d)

For the Appellant : Mr. U.S. Agarwal

For the State : Mr. Subir Ganguly

ASHIM KUMAR BANERJEE.J:

1.FACTS :-

One Sumitra Devi Ram, widow of late Showbaran Ram, residing at Botanical Garden Collie Quarter, Howrah lodged a complaint with the Officer in charge, Howrah Police Station on August 31, 2001. According to the complaint, her daughter Kabita Routh got married with Shyamlal Routh, a class-IV staff of Howrah Municipal Corporation. The couple had a discord resulting litigations in Court. On August 31, 2001 at about 10.30/10.45 a.m. Kabita was approaching Howrah Court. When Kabita was passing through C.S.T.C. garage at Foreshore Road, Shyamlal attacked her. He grabbed her and tried to kill by striking her with a razor. Kabita shouted, people from the neighbourhood came. The miscreants whisked away from the place of occurrence. Pertinent to note, Shyamlal was accompanied by his friends. Kabita rushed to the Howrah General Hospital where she was treated. Sumitra came to search Kabita in Court. Her advocate told her that Kabita was admitted in Hospital. She rushed to the Howrah General Hospital where

Kabita narrated her the incident in detail. Sumitra got engaged in arranging proper treatment for Kabita. Hence, she was little delayed in lodging the FIR. FIR was lodged at about 10.05 p.m.

2.CHARGE :-

On the basis of the complaint lodged by Sumitra the Police arrested Shyamlal and charged him for an offence punishable under Section 304 read with Section 34 of the Indian Penal Code. Shyamlal was charged along with an unknown person said to be his companion.

3. PROSECUTION WITNESS :-

PW-1 (Sumitra Devi Ram) :-

Sumitra was a resident of Kuli Line, Botanical Garden, Howrah. Her daughter Kabita was married to Shyamlal. They used to reside at Bagdipara, Shibpur. Trouble started after the marriage. Kabita filed a maintenance case in Howrah Criminal Court. She left her marital home and started living with Sumitra. On December 31, 2001 maintenance case was fixed in Court. Hence, Kabita was going to Court when she was attacked by Shyamlal and his friends. Sumitra got such belated information and rushed to Court. She reached Court at 4.00 p.m. Sunil Mondal, Sunil Das and other persons accompanied her. When she reached Court she was informed by the lawyer and his clerk that Kabita had been admitted in Hospital. She went to the Hospital and met Kabita when Kabita narrated her the incident in detail. In cross-examination Sumitra admitted having discord between Kabita and Shyamlal since after three months of marriage. Shyamlal was a widower having two children.

PW-2 (Sunil Mondal) :-

Sunil was a neighbour of Sumitra. He corroborated Sumitra with regard to the subject incident.

PW-3 (Kabita Routh) :-

Kabita was the victim of the incident. Shyamlal had two daughters by his first wife and both of them were grown up. Shyamlal married for the second time with Kabita. After three months of marriage they had quarrel between themselves. Kabita left her marital place. Infact, she was driven away. She started staying with her mother. On the fateful day, his maintenance case was fixed before the learned Magistrate. When she was passing through Foreshore Road, Shyamlal attacked her. His companion caught hold of her hands when Shyamlal dealt a blow on her neck by a razor. She sustained severe cut injury. She tried to stop bleeding by the end of her sari and approached the Court. She stated everything to her advocate and his clerk, then she was sent to the Howrah General Hospital, female ward where she was treated. She faced a rigorous cross-examination, however, could not be shaken.

PW-4 (Abhijit Datta) :-

Abhijit was a lawyer of Howrah Court. Kabita was her client. One revisional application was pending before the learned District Judge. It was fixed on the fateful day for hearing. Kabita came to Court in connection with the said case when she was attacked by her husband. Kabita soon after sustaining injury approached her Sheristha and then she was taken to the hospital. In cross-examination, Abhijit produced her case diary maintained by his clerk. Abhijit immediately informed the incident before the learned District and Sessions Judge where the revisional application was pending.

PW-5 (Kartick Mahato) :-

Kartick accompanied Sumitra to the Hospital. According to Kartick, Kabita narrated the incident to her mother.

PW-6 (Dr. Santi Swarup Biswas) :-

The witness was the medical officer in Howrah District Hospital. On August 31, 2001 at about 10.55 a.m. he treated Kabita while on emergency duty. The doctor gave details of the injury suffered by Kabita. According to him, the injuries could be caused by sharp cutting weapon like razor/knife. The doctor also stated that the patient took the name of her husband, however, the nature of weapon was not spelt out. He proved his certificate being Exhibit-2.

PW-7 (Bijoy Ghosh) :-

The witness was the clerk to PW-4. The victim Kabita was their client. She came to Court in connection with a criminal revision application being C.R. No.111 of 2001. The said case was fixed on August 31, 2001 before the learned Sessions Judge. The witness proved the entry in the diary as Exhibit 3. At about 10.30 a.m. on the said day Kabita came to the sherista holding her neck with her hands and she was bleeding profusely. Her wearing apparels were soaked with blood. The pathway to the sherista was blood stained. The witness took the victim to the Hospital. He thereafter narrated the incident to his master (PW-4) and the victim's mother (PW-1).

PW-8 (Subrata Mitra) :-

The witness was also a clerk to PW-4. He was a post occurrence witness. He was told by Bijoy that Kabita came with the injury and was taken to the Hospital. The witness also found blood stain in their sherista.

PW-9 (Md. Abdul Hai Sardar) :-

The witness was the Sub-inspector of Howrah Police Station. At about 10.05 p.m. he received the written complaint. He registered the formal FIR and started the P.S. Case No.130 as against Shyamlal and one unknown person under Section 326/307 read with Section 34 of the Indian Penal Code. He proved the FIR being Exhibit 4. He also narrated in detail about the

investigation carried out by him. He also proved the seizure list where the seized weapon was mentioned.

4. EXAMINATION OF THE ACCUSED :-

Accused Shyamlal was examined under Section 313 where he pleaded innocence.

5. JUDGMENT :-

Considering the evidence on record the learned Judge held the accused Shyamlal guilty of the offence and sentenced him rigorous imprisonment for ten years coupled with a fine of Rs.2000/- and in default to suffer rigorous imprisonment for another six months.

6. APPEAL :-

Being aggrieved by the judgment and order of the learned Sessions Judge, Howrah dated September 18, 2003 the appellant preferred the instant appeal which we heard on the above mentioned dates.

7. CONTENTION OF THE APPELLANT :-

Mr. U.S. Agarwal, learned counsel appearing for the appellant contended as follows :-

- i) No eye-witness came to support the prosecution story, although the incident allegedly occurred in broad daylight on a public thorough fare.
- ii) The case diary was not seized by the Police. It was also not produced at the time of trial. Hence, the claim of the prosecution that the victim was coming to court in connection a criminal case initiated as against the appellant, was not proved.
- iii) PW-7 deposed that the victim was bleeding profusely whereas the doctor did not mention about bleeding.

iv) The purported injury report did not have any initial or thumb impression of the victim. Hence, it could not be proved that the alleged report belonged to the victim and nobody else.

8.CONTENTION OF THE PROSECUTION :-

Mr. Subir Ganguly, learned counsel appearing for the prosecution contended as follows :-

i) The victim herself was the witness to the incident. She narrated in detail as to the happening of the incident. Such ocular evidence was trustworthy and inspired confidence of Court.

ii) The Injury Report did not mention the exact timing as to the treatment of the victim. Such minor omission could not vitiate the proceeding and/or the result thereof as the doctor thought it prudent to attend the victim who was fighting for life, instead of going into the mechanical formalities.

iii) Omission to obtain thumb impression on the injury report could not have any consequence considering the circumstances leading to preparation of the injury report.

iv) Once the doctor supported the injury coming to the box, omission to take the thumb impression of the victim would have no consequence at all.

v) Admittedly the offending weapon was seized by the Police and the seizure list was duly proved during trial.

vi) The doctor being a disinterested witness clearly and elaborately narrated the injury and the treatment given to the victim, such evidence coupled with the evidence of the victim herself was sufficient enough to write a judgment of conviction.

9.REPLY :-

Mr. Gupta, in reply, contended that the victim did not mention the name of the accused or the offending weapon before the doctor. Hence, her evidence at the trial implicating her husband was nothing but an after thought.

10. OUR VIEW :-

- a) On a careful analysis of the evidence we do not find any scope to disbelieve the victim. Moreover, the victim's statement was corroborated by her lawyer and his clerks who were post occurrence witnesses.
- b) The victim was consistent on the assault made to her by the appellant. She immediately approached PW-7, the clerk of her lawyer and narrated the incident to him. PW-7 took her to the Hospital. The doctor being PW-6 also deposed that she took the name of her husband. PW-8, another lawyer's clerk also corroborated the prosecution case, so was the lawyer himself being PW-4. Hence, the incident was amply proved by the prosecution. Mr. Agarwal put emphasis on the technicalities which, in our view, were minor omissions and could not have any significant role to raise doubt in the mind of the Court.
- c) The matter may be looked at from a different view. When a patient with injury approached a doctor, it was the paramount duty of the doctor to attend the patient rather than to complete the official formalities first. From the evidence of the doctor we find, according to him, if the patient was unattended for some more time it would have been serious. In such view, the omission to have thumb impression on the injury report could not have any significance.
- d) Agarwal was not right in saying that the case diary was not exhibited. We find that the lawyer's diary having an entry that the criminal revision application was fixed on August 31, 2001, was tendered as exhibit through PW-7.

e) Mr. Agarwal also contended that no eye-witness came forward to support the prosecution story. It is true that the incident occurred in broad day light. It is also true that it happened on a public thorough fare. We however cannot overlook the fact that seldom people come forward to help the prosecution in such type of cases. It is unfortunate. However, such reality would have to be accepted. It might be, because of people being self-centered or due to fear of unnecessary harassment by the Police. Be that as it may, once the victim herself came forward and deposed to support the prosecution and such deposition had consistent corroboration from the doctor, lawyer and his clerks we do not have any hesitation to affirm the judgment of conviction even in absence of any other eye-witnesses.

11.RESULT :-

The appeal fails and is hereby dismissed.

12. DIRECTION :-

The appellant is now in jail. He is directed to serve out the remaining part of his sentence as awarded by the learned Trial Judge. A copy of this judgment be sent to the correctional home, where the appellant is suffering his sentence, for his information. Let a copy of this judgment along with Lower Court Records be sent to the Court of learned Trial Judge for information and necessary action. Urgent xerox certified copy will be given to the parties, if applied for.

Raghunath Ray, J:

I agree.

[ASHIM KUMAR BANERJEE,J.]

[RAGHUNATH RAY,J.]

