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SADANANDA MONDAL  
v.  
STATE OF WEST BENGAL  
(Criminal Appeal No.1555 of 2009)

B

AUGUST 05, 2013

[P. SATHASIVAM, CJI AND J. CHELAMESWAR, J.]

*PENAL CODE, 1860:*

C

*s. 302/34 – Death of victim by gunshot injury – Out of 14 accused, 13 acquitted by counts below – Conviction of appellant and sentence of life imprisonment – Held: Out of the two brothers of deceased, evidence of one was disbelieved by High Court as he made inconsistent statements u/s 161 Cr.P.C. and before court – The other brother introduced names of other accused persons whom he did not name in FIR – There was also no explanation as to the discrepancy in the father's name of appellant, though he was a neighbour – Besides, there was no recovery of gun used in the crime or of any pellet – Courts below, having disbelieved the entire case of prosecution as regards 13 out of 14 accused, on the basis of the same evidence should not have convicted the appellant when there was no clinching evidence or incriminating circumstance against him – Further, appellant did not abscond, which fact proves his defence that he has nothing to do with the crime – Prosecution has failed to establish its case beyond reasonable doubt – Conviction and sentence imposed on appellant, set aside.*

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**The appellant was prosecuted along with 13 others for causing the death of the brother of PW1. The prosecution case was that during a picnic, a dispute arose between some of the persons on the accused side on the one hand and the complainant party on the other, which was settled by the intervention of mediators.**

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However, when the complainant party reached near the house of appellant's father, the appellant came out of the house and fired at the brother of PW1. The injured was taken to the hospital, where he died on the following day. The trial court convicted 6 accused u/s 302/34 IPC. The High Court maintained the conviction and sentence of the appellant and acquitted the other 5 convicts.

Allowing the appeal, the Court

HELD: 1.1. From the evidence of PW-1, it is seen that the appellant is the next door neighbour of the deceased. This witness introduced the names of other accused persons whom he did not name in the FIR. PW-2 turned hostile. PW-3, another younger brother of the deceased, though deposed before the court that he saw that the appellant fired a shot at the deceased, the Investigating Officer, PW-12, admitted in his cross-examination that PW-3 had not stated anything in his statement u/s. 161 Cr.P.C. In such circumstance, no weightage need be given to his statement made in the court. The High Court itself has rightly concluded that his evidence is unreliable. [Para 8] [861-B-E]

1.2. The courts below, having disbelieved the entire case of the prosecution as regards 13 out of 14 accused persons, on the basis of the same evidence, should not have convicted the appellant when there was no other cogent and convincing evidence or incriminating circumstance against him. The High Court committed an error in convicting him solely on the basis of the evidence of PW-1, who was one of the brothers of the deceased when the other brother viz., PW-3 did not corroborate him. [Para 10] [861-G-H; 862-A]

1.3. Admittedly, there was no recovery of the alleged weapon used in the incident. The pellet alleged to have emanated from the gun also was not recovered. There

A was also no explanation as to the discrepancy in the  
father's name of the appellant and the de facto  
complainant being a neighbour of the appellant could not  
B have made such a vital mistake. Another important  
circumstance which goes against the case of prosecution  
is the conduct of the accused. He was very well available  
before and after the incident and did not abscond which  
factor proves his defence that he has nothing to do with  
the crime. [Para 11-12] [862-C-F]

C 1.4. Thus, the prosecution has failed to establish its  
case beyond reasonable doubt even against the  
appellant and he is also entitled to the benefit of doubt  
along with the other accused. Accordingly, the conviction  
and sentence imposed on the appellant is set aside. [Para  
D 13] [862-F-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1555 of 2009.

E From the Judgment and Order dated 11.04.2008 of the  
High Court at Calcutta in C.R.A. No. 155 of 2004.

Pradip Ghosh, Rauf Rahim, Yadunandan Bansal for the  
Appellant.

F Chanchal Kr. Ganguli, Avijit Bhattacharjee, Soumi Kundu  
for the Respondent.

The Judgment of the Court was delivered by

G **P. SATHASIVAM, CJI.** 1. This appeal has been filed  
against the final judgment and order dated 11.04.2008 passed  
by the High Court of Calcutta in C.R.A. No. 155 of 2004  
whereby the Division Bench of the High Court dismissed the  
appeal filed by the appellant herein.

H 2. **Brief facts:**

(a) On 14.01.2002, Avik Mondal (PW-1) - the de facto complainant and the cousin brothers of Sadananda Mondal (the appellant herein), namely, Newton Mondal, Manoj Mondal, Brojen Mondal and others were holding picnic. At about 4 p.m., the complainant party had altercation with Newton Mondal, Lalmohan Mondal, Brojen Mondal and Dilip Tarafdar. At the relevant time, on the intervention of Madhu Ghosh, Mrinmoy Chakraborty, Kartick Ghosh and Asish Sarkar, the dispute was settled and thereafter all of them left the place for their houses. When Bharat Mondal, elder brother of the de facto complainant, reached near the house of Narugopal Mondal, the son of Narugopal, namely, Sadananda Mondal (the appellant herein), fired at him from his house which hit on his chest near the lungs and he fell down. PW-1 lifted Bharat Mondal with the help of some villagers and took him in a Jeep to Berhampore Hospital for treatment.

(b) Thereafter, at 9.00 p.m., Avik Mondal (PW-1) went to the Tehatta Police Station and lodged a complaint. On the basis of the said complaint, a First Information Report (FIR) being No. 10 of 2002 was lodged under Section 326 of the Indian Penal Code, 1860 (in short "IPC"). On the following day, i.e., 15.01.2002, Bharat Mondal succumbed to his injuries.

(c) On the basis of the said report, Sadananda Mondal - the appellant herein (A-1) along with 13 others viz., Prasanta Mondal (A-2), Sushanta Mondal (A-3), Sanatan Mondal (A-4), Nisith Mondal (A-5), Sukhen Mondal (A-6), Biswanath Mondal (A-7), Manoj Mondal (A-8), Mahitosh Mondal (A-9), Brojen Mondal (A-10), Dilip Tarafdar (A-11), Newton Mondal (A-12), Lalmohan Mondal (A-13) and Dasarath Tarafdar (A-14) was taken into custody. After investigation, a chargesheet was filed against the accused persons under Section 302 read with Section 34, Section 120-B of IPC and the case was committed to the Court of Additional Sessions Judge, Fast Track Court 1, Krishnanagar, Nadia and was numbered as Sessions Case No. 2(10) of 2003.

(d) Vide orders dated 17/19.02.2004, the Additional

A Sessions Judge, Fast Track Court-I, Krishnanagar, in Sessions  
Trial No. 111 of December, 2003 arising out of Sessions Case  
No. 2(10) of 2003 convicted 8 accused persons viz.,  
Sadananda Mondal (A-1), Sukhen Mondal (A-6), Biswanath  
Mondal (A-7), Manoj Mondal (A-8), Mahitosh Mondal (A-9),  
B Brojen Mondal (A-10), Dilip Tarafdar (A-11) and Newton Mondal  
(A-12) under Sections 302 read with 34 IPC and sentenced to  
undergo imprisonment for life along with a fine of Rs. 5,000/-  
each, in default, to further undergo rigorous imprisonment for  
one year. However, rest of the six accused persons, viz.,  
C Prasanta Mondal (A-2), Sushanta Mondal (A-3), Sanatan  
Mondal (A-4), Nisith Mondal (A-5), Lalmohan Mondal (A-13)  
and Dasarath Tarafdar (A-14) were acquitted of all the charges.

(e) Being aggrieved of the above order, A-1 (the appellant  
herein), preferred an appeal being C.R.A. No. 155 of 2004 and  
D rest of the 7 accused persons filed an appeal being C.R.A. No.  
166 of 2004 before the High Court. The High Court, by order  
dated 11.04.2008 allowed C.R.A. No. 166 of 2004 and set  
aside the judgment and order dated 17/19.02.2004 passed by  
the Additional Sessions Judge against the appellants therein  
E and dismissed C.R.A. No. 155 of 2004 preferred by the  
appellant herein.

(f) Aggrieved by the said order, the appellant has preferred  
this appeal by way of special leave before this Court.

3. Heard Mr. Pradip Ghosh, learned senior counsel for the  
F appellant and Mr. Chanchal Kr. Ganguli, learned counsel for the  
respondent-State.

**Contentions:**

4. Mr. Pradip Ghosh, learned senior counsel for the  
appellant, after taking us through the entire materials, namely,  
G oral and documentary evidence, the decision of the trial Court  
as well as the High Court submitted that when the prosecution  
case was disbelieved by the courts below as regards 13 out  
of 14 accused persons, whether the High Court is right in  
confirming the conviction and sentence imposed on the  
H appellant alone on the basis of the same evidence which had

been found to be unreliable in respect of 13 accused persons. He also submitted that whether the High Court was justified in convicting the appellant solely on the basis of the evidence of PW-1 who was one of the brothers of the deceased when the other brother viz., PW-3 did not corroborate, more particularly, when the evidence of PW-3 was found by the High Court to be unreliable. He also submitted that the High Court should have acquitted the appellant giving him the benefit of doubt as the prosecution failed to prove its case beyond reasonable doubt. On the other hand, Mr. Ganguli, learned counsel appearing for the respondent-State submitted that in spite of acquittal of 13 out of 14 accused persons, it was the appellant herein who came out of his house and fired a shot at Bharat Mondal (since deceased) using a fire arm which hit him on his chest near the lungs and he fell down. He further pointed out that though the other accused managed to escape, the present appellant was the person who fired a gun shot which resulted in the death of one person, accordingly, he prayed for dismissal of the appeal.

5. We have considered the rival contentions and perused all the relevant materials.

**Discussion:**

6. It is relevant to point out that the prosecution charge sheeted 14 accused persons including the appellant. Out of 14, the trial Court acquitted 8 accused persons and the High Court acquitted 5 out of 6 accused persons. In other words, after the impugned order of the High Court, except A-1 (the appellant herein), all were acquitted from the charge under Section 302 read with Section 34. In these circumstances, we have to consider whether the prosecution has established the case against the appellant beyond reasonable doubt.

7. It is useful to refer the contents of FIR (Ex.P-1) which reads as under:

"To

The O.C. Tehatta P.S.

Sir,

I, Avik Mondal son of Satyanranjan Mondal of Sahebnagar

A Madhyampara Police Station, District Nadia arriving to this  
 Police Station this day of 14.01.2002 at about 9.00 p.m.  
 in the night, am submitting the complaint that today at noon  
 in the Kash field, we and in the side of one place the sons  
 of the uncle of Sadananda Mondal, i.e., Newton Mondal,  
 B Manoj Mondal, Brojen Mondal and others were taking part  
 in a picnic. In the afternoon at about 4.00 p.m. there made  
 a quarrel amongst Newton Mondal, son of Mantu Mondal,  
 Lalmohan Mondal son of Sunil Mondal, Brojen Mondal, son  
 of Mahadeb Mondal and Dilip Tarafdar son of Ratan  
 C Tarafder and that quarrel was settled by mediator Madhu  
 Ghosh, Mrinmoy Chakraborty, Kartick Ghosh and Asis  
 Sarkar and after settling the dispute we set out towards  
 our respective house and when my elder brother Bhàrat  
 Mondal son of Satyanaranjan Mondal when came near the  
 D house of Narugopal Mondal, then Sadananda son of  
 Narugopal shot aiming my elder brother from his huse at  
 about 5.00 p.m. in the afternoon.

The bullet shot by him, hit my elder brother in his belly and  
 wounded seriously and we sent him to the Bejrampore  
 Hospital then we came to Police Station and submit  
 E complaint.

Therefore, Sir, after taking necessary steps the aforesaid  
 matter according to law and to impose punishment upon  
 the accused Sadananda Mondal and it is mentioned here  
 F that the said Sadananda Mondal is a running Military  
 Service man.

Submitted humbly

Sd. Avik Mondal

Sd. Satya Ranjan Mondal

G (Saheb nagar)  
 (In Bengali)"

H It is seen from the FIR that it not only implicates Sadananda  
 Mondal, the appellat here in, but also other accused who were  
 acquitted by the trial Court and the High Court. No doubt, it

states that the bullet hit Bharat Mondal (the deceased) in his belly which resulted in fatal injury. The complaint was made by PW-1. A

8. From the evidence of Avik Mondal (PW-1), it is seen that the appellant is the next door neighbour of the deceased. This witness introduced the names of other accused persons whom he did not name in the FIR. Prasun Biswas (PW-2) turned hostile, however, prosecution relied on his statement to the extent that the incident took place near his house and he heard the sound of bomb explosion. Badal Mondal (PW-3), another younger brother of the deceased, also supported the case of the prosecution. According to PW-3, when he was returning from the field, he saw that the appellant fired a shot at Bharat Mondal (since deceased) with a fire-arm below his chest. He also stated that on seeing the same, he got frightened and fled away towards his house. It is relevant to point out that the Investigating Officer, Kanchan Roy Mukherjee (PW-12), sub-Inspector of Police admitted in his cross-examination that PW-3 had not stated anything while recording the statement under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code'). In such circumstance, no weightage need be given to his statement made in the Court. The High Court itself has rightly concluded that his evidence is unreliable. B C D E

9. Dr. Ranjit Kumar Roy Chowdhury, the surgeon, who conducted the post-mortem of the deceased, was deposed as PW-11. After narrating all the injuries, he opined that death was due to gun shot injury leading to shock which was ante mortem and homicidal in nature. The post-mortem report has been marked as Exh. 5. F

10. The courts below, having disbelieved the entire case of the prosecution as regards 13 out of 14 accused persons, on the basis of the same evidence, as rightly pointed out by Mr. Ghosh, should not have convicted the appellant when there was no other cogent and convincing evidence against him. In other words, in the absence of any clinching evidence or incriminating circumstance against him, the High Court G H

A committed an error in convicting the appellant solely on the basis of the evidence of PW-1, who was one of the brothers of the deceased when the other brother viz., PW-3 did not corroborate him, particularly, when the evidence of PW-3 was found by the High Court to be unreliable. Having disbelieved B the alleged eye-witnesses while considering the case of other accused persons, in the absence of any reason, the High Court is not justified in accepting the very same statement of the witnesses in the case of the appellant herein.

11. Admittedly, there was no recovery of the alleged C weapon used in the incident. The pellet alleged to have emanated from the gun also not got recovered and even no attempt was made to recover the same. It is also not known whether the pellet so fired was from the same weapon. We have already pointed out that PW-3 made inconsistent D statements during the trial and while being examined under Section 161 of the Code. There was also no explanation as to the discrepancy in the father's name of the appellant (Naan Gopal and Santosh) and the de facto complainant being a neighbour of the appellant could not have made such a vital E mistake.

12. Another important circumstance which goes against the case of the prosecution is the conduct of the accused. He was very well available before and after the incident. In other words, the appellant-accused did not abscond which factor proves his F defence that he has nothing to do with the crime in question.

13. In the light of the above discussion, we are satisfied that the prosecution has failed to establish its case beyond reasonable doubt even against the appellant and he is also entitled to the benefit of doubt along with the other accused. G Accordingly, the conviction and sentence imposed on the appellant A-1 is set aside and he is ordered to be released forthwith if not required in any other offence. The appeal is allowed.

R.P.

Appeal allowed.

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