

CASE NO.:
Appeal (crl.) 22 of 2001

PETITIONER:
AMAR MALLA & ORS.

Vs.

RESPONDENT:
STATE OF TRIPURA

DATE OF JUDGMENT: 23/08/2002

BENCH:
U.C. BANERJEE & B.N. AGRAWAL.

JUDGMENT:

B.N.AGRAWAL, J.

Appellants were convicted by the trial court under Section 302 read with Section 34 of the Penal Code and sentenced to undergo imprisonment for life. They were further convicted under Section 326 read with Section 34 of the Penal Code and each one of them was sentenced to undergo rigorous imprisonment for a period of three years. The sentences, however, were ordered to run concurrently. On appeal being preferred by the appellants, their convictions and sentences have been upheld by the High Court.

Prosecution case, in short, is that on 5.9.1990 at 9 P.M. a meeting in the locality was held in the house of one Subhash Chandra Das (PW.4) to discuss the organisational matters in respect of ensuing Durga Puja which the members wanted to celebrate under the auspices of Kiran Sangha Club, its Secretary being one Narayan Debnath (PW.18). At the place of meeting, all of a sudden, thirteen accused persons came armed with daos (chopper), lathis, ballams, etc. and started assaulting Laxman Debnath, Baghla Charan Das (PW.9) Santosh Das (PW.12), Rajani Debnath (PW.16) and Narayan Debnath (PW.18) on their heads and other parts of body as a result of which Laxman Debnath subsequently succumbed to the injuries. When the accused persons were going out from the house, they assaulted other persons as well. Stating the aforesaid facts, on the basis of the written report submitted by PW.4, the First Information Report was drawn up at the police station on the same day at 10.45 p.m. in which names of all the accused persons were mentioned.

The police after registering the case took up investigation and on completion thereof submitted charge sheet on receipt whereof, the learned Magistrate took cognizance and committed all the 13 accused to the Court of Sessions to face trial.

Defence of the accused persons was that they were innocent. They, however, have not denied their presence at the alleged place and time of occurrence. According to them, they were also invited to the meeting in which they were present during the course of which some altercation ensued between the two groups one led by the deceased-Laxman Debnath and another by the accused persons. The prosecution party, according to the defence, was the aggressor and some of the accused persons were assaulted by them and they had received injuries. One of the accused Shanker Debnath had taken a plea of alibi as, according to him, he was undergoing orientation programme course in Sericulture Training Institute at Santir Bazar.

During trial, the prosecution examined 24 witnesses in all out of whom 11 persons claimed to be the eyewitnesses, namely, PWs. 4 to 12, 16 and 18. From amongst these witnesses, PW.4 is nobody else than the informant himself, whereas PWs. 5, 9, 12, 16 and 18 claimed to have received injuries during the course of the occurrence. PWs. 1 and 17 are witnesses who have corroborated the statements of the eyewitnesses. PWs. 2,3,13,14 and 15 are formal witnesses. PW. 19 is Doctor who examined the injuries of the injured prosecution witnesses as well as some of the accused persons. PW.21 is also a Doctor who held postmortem examination on the dead body of the deceased. PW.23 is a Police Officer who drew up formal First Information Report whereas PWs. 20 and 24 are the two Investigating Officers. Upon the conclusion of trial, the learned Sessions Judge convicted all the accused persons, as stated above, and their convictions and sentences have been upheld by the High Court. Hence this appeal by special leave.

Shri P.N. Misra, learned Senior Counsel appearing in support of the appeal, at the outset, submitted that the High Court has not considered the regular appeal preferred by the appellants in the manner postulated under law which amounts to negation of their right of appeal, therefore, the appeal should be remitted to it for considering the same afresh in accordance with law. We have been taken through the impugned judgment of the High Court from which it does not appear that the same suffers from any infirmity as entire evidence has been considered by it, although not in great detail. It appears to us that the High Court has taken into consideration vital points raised in the case and material evidence adduced by the parties. Minor discrepancies pointed out in the evidence of the prosecution witnesses did not rightly weigh with the High Court as in its opinion the prosecution witnesses had supported the prosecution case in material particulars. Even though we are not inclined to accept the submission put forth by learned counsel on behalf of the appellants, we feel that the High Court has not considered individual cases of the accused persons, which we propose to ourselves consider instead of remitting the appeal.

Appellant No. 1 is said to have assaulted deceased-Laxman with dao. PWs. 4,5,6,8,11 and 12 have stated that this appellant inflicted injuries upon the deceased. Appellant No. 2 is also said to have assaulted the deceased as would appear from the evidence of PWs. 8 and 11. Likewise, Appellant No. 3, according to the evidence of PWs. 4,5,6,8,10,11 and 12, had assaulted the deceased. Appellant No. 4, as disclosed by PWs. 8 and 11, assaulted the deceased. Appellant No. 5, as stated by PWs. 4,5 and 10, assaulted the deceased. Appellant No. 6 is said to have assaulted the deceased, as unfolded by PWs. 6,8,10,11 and 12 in their evidence. Appellant Nos. 7,8,9,10 and 11 assaulted the deceased as disclosed by the solitary witness PW. 11. Appellant No. 12, as deposed to by PWs. 8 and 11, inflicted injuries upon the deceased. Appellant No. 13, according to the evidence of PW.8, assaulted the deceased. Shri Misra pointed out certain minor discrepancies in the evidence of some of the prosecution witnesses which cannot be said to materially affect the prosecution case and reliability of their evidence which is consistent on vital points. Be that as it may, so far as the evidence of PW.4 the informant and PW.10 is concerned, Shri Misra could not point out any discrepancy therein and we find that their evidence is consistent with the prosecution case disclosed in the First Information Report and supported by the objective finding of the Investigating Officer who seized blood stained earth from the place of occurrence, and the evidence of the Doctors who held postmortem examination on the dead body of the deceased as well as examined the injured eyewitnesses.

So far as assault upon PWs. 9, 12, 16 and 18 by the accused persons is concerned, it may be stated that according to evidence of PWs. 4,5,6,8,9,11,12, 16 and 18, appellant No. 11 assaulted PW.9 by dao. PW.12 is said to have been assaulted by appellant No. 6 by lathi as would appear from the evidence of PW.6 and appellant No. 12 is said to have assaulted him with dao according to the evidence of PWs. 4, 6 and 12. Third injured witness-PW.16 is said to have been assaulted by appellant No. 3 by dao as deposed to by PWs. 4,5,6,8,11 and 16. The last injured witness - PW.18, according to the evidence of PWs. 4 and 5, was assaulted by appellant No. 6. Further, this witness was assaulted by

appellant Nos. 11 and 13 according to the evidence of PWs. 4,5,6,8 and 12. Shri Misra pointed out certain discrepancies in the evidence of some of the witnesses, but the same can be of no avail to the defence as these are minor ones. In any view of the matter, so far as assault on PW.9 is concerned, PWs. 4,5, and 9 have consistently supported the prosecution case and no infirmity could be pointed out therein. As far as the injuries upon PWs. 12 and 16 are concerned, they have consistently supported assault on them and there is no discrepancy therein. In relation to assault upon PW.18, evidence of this witness is corroborated by PW. 4 and he has consistently supported the prosecution case unfolded in the First Information Report.

The next submission of Shri Misra is that in the alleged occurrence accused Amar Malla, Milan Malla and Prafulla Debnath had also received injuries and the prosecution has failed to explain the same. From the nature of injuries said to have been received by these accused persons, it would appear that the same were simple and minor ones. It is well settled that merely because the prosecution has failed to explain injuries on the accused persons, ipso facto the same cannot be taken to be a ground for throwing out the prosecution case, especially when the same has been supported by eyewitnesses, including injured ones as well, and their evidence is corroborated by medical evidence as well as objective finding of the Investigating Officer.

Shri Misra lastly submitted that in any view of the matter, no case under Section 302 of the Penal Code is made out inasmuch as the accused persons were invited to attend the meeting and while they and the members of the prosecution party were attending the same, some altercation ensued in which there was free fight as a result of which members belonging to both sides received injuries. In our view, there is absolutely no foundation for this submission as out of the 11 eyewitnesses examined in the case, including the injured ones, only PW.7, who was declared hostile, has made a vague statement to show that accused persons were present in the meeting from before and some altercation ensued therein. In view of the fact that this witness has made vague statements and she has been declared hostile, veracity of statements of other ten eyewitnesses, including injured ones, to the effect that while the members of the prosecution party were holding meeting, the accused persons armed with deadly weapons arrived there and assaulted them, cannot be doubted. When asked, if the accused persons were invited to the meeting and they were attending the same from before, as to what was the reason for their being armed with deadly weapons, Shri Misra had no answer to offer, except saying that in that part of the country which is hilly area, people generally carry arms with them for which there is no evidence whatsoever. Thus, we do not find any substance in this submission which is accordingly rejected.

In view of the foregoing discussion, we are of the view that the High Court has not committed any error in upholding convictions of the appellants and sentences awarded to them, as such no interference is called for by this Court.

Accordingly, the appeal fails and is dismissed. Out of the appellants, bail bonds of six of them, namely, Milan Chandra Malla(appellant No. 2), Raiharan Debnath(appellant No. 6), Dipak Debnath(appellant No. 8), Sankar Debnath(appellant No. 9), Rakhal Debnath(appellant No. 10) and Hemanta Debnath(appellant No. 11) who were granted bail by this Court, are cancelled and they are directed to be taken into custody forthwith for undergoing remaining period of their sentence.